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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 31

**THE SOVEREIGN CAMP OF THE WOODMEN OF
THE WORLD, PETITIONER,**

vs.

**WILLIAM F. BOLIN, EDWARD E. BOLIN AND
SAMUEL A. BOLIN, ET AL.**

**ON WRIT OF CERTIORARI TO THE KANSAS CITY COURT OF APPEALS OF
THE STATE OF MISSOURI.**

PETITION FOR CERTIORARI FILED MAY 7, 1938.

CERTIORARI GRANTED MAY 31, 1938.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

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THE WORLD, PETITIONER,

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OF THE STATE OF MISSOURI

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[fol. a] **IN THE KANSAS CITY COURT OF APPEALS**

OCTOBER TERM, 1936

No. 18928

WM. F. BOLIN et al., Respondents,

vs.

THE SOVEREIGN CAMP OF THE WOODMEN OF THE WORLD, a Corporation, Appellant

STATE OF MISSOURI, set:

Be it remembered that heretofore, to-wit, on December 4, 1936, there was filed in the office of the clerk of the Kansas City Court of Appeals, a transcript of appeal wherein Wm. F. Bolin, et al., were respondents, and The Sovereign Camp of the Woodmen of the World, a Corporation, was appellant, No. 18928, which said transcript of appeal is in words and figures as follows: to-wit:

WILLIAM F. BOLIN, EDWARD E. BOLIN, SAMUEL A. BOLIN, John O. Bolin, Sarah B. Campbell, James D. Bolin, Elaine Scott, Perry Bolin and Homer Bolin, Frank Bolin, Keith Bolin and Dean Bolin, by Iva Dale, Their Natural Guardian, Plaintiffs,

vs.

THE SOVEREIGN CAMP OF THE WOODMEN OF THE WORLD, a Corporation, Defendant

Appeal from the Nodaway County Circuit Court

STATE OF MISSOURI,

County of Nodaway, ss:

Proceedings in the Circuit Court of Nodaway County, Missouri, at a Term begun and held at the Court House in the City of Maryville, County and State aforesaid, on the 9th day of April, 1934, before the Honorable D. D. Reeves, Judge of the Fourth Judicial Circuit of the State of Missouri:

FRANK W. BOLIN et al., Plaintiffs,

vs.

SOVEREIGN CAMP OF THE WOODMEN OF THE WORLD, a Corporation, Defendant

CONTRACT

Be it Remembered, That, heretofore, to-wit: on the 13th day of April, 1934, the same being the 4th day of the regular April, 1934, Term of said Court, the following proceedings were had and made of record, in the above entitled cause, to-wit:

Defendant files amended answer. Plaintiff files reply. Plaintiff files motion to strike answer. Motion to strike answer taken up and considered and same is by the Court overruled. Plaintiff accepts. This cause coming on to be heard; comes plaintiff and defendant and each by their respective counsel answer ready for trial; whereupon cause is submitted to a jury duly empanelled and sworn to try said cause, to-wit: (Jury) By agreement of parties, after a jury empanelled and sworn and some evidence heard; jury is discharged from further consideration of the case and because is by agreement submitted to the court setting as a jury.

And thereafter on the 1st day of May, 1934, the same being the 18th day of the regular April 1934, Term of said court the following further proceedings were had and entered of record, to-wit:

And thereafter the court heard further evidence and upon the whole evidence heard the court finds for the plaintiffs in the sum of \$1100.00, judgment on finding. Defendant files motion to set aside finding and judgment and grant it a new trial.

And thereafter on the 28th day of May, 1934, the same being the 19th day of the regular April, 1934, Term of said court, the following further proceedings were had and entered of record, to-wit:

Motion for a new trial taken up and considered and same is by the court overruled. Judgment of finding. Defendant files application and affidavit for appeal. Appeal allowed to [fol. c] the Supreme Court of Missouri. Appeal bond fixed

at \$2200.00, to be filed with and approved by the Clerk within 10 days in vacation. Defendants time in which to file bill of exceptions extended until and during next term of this court.

IN THE CIRCUIT COURT OF NODAWAY COUNTY, MISSOURI, APRIL
TERM, 1934

No. 480

WILLIAM F. BOLIN, EDWARD E. BOLIN, SAMUEL A. BOLIN,
John O. Bolin, Sarah B. Campbell, James D. Bolin, Elaine
Scott, Perry Bolin and Homer Bolin, Frank Bolin, Keith
Bolin and Dean Bolin, by Iva Dale, Their Natural Guard-
ian, Plaintiffs,

vs.

THE SOVEREIGN CAMP OF THE WOODMEN OF THE WORLD,
a Corporation, Defendant

JUDGMENT

Now on this 13th day of April, 1934, the same being the 4th day of the regular April, 1934, Term of the Circuit Court of Nodaway County, Missouri, this cause coming on for trial, come now the parties plaintiffs and defendant and their respective counsel and announce ready for trial, and the following duly qualified jurors were duly sworn to try said cause, to-wit: Henry Hansen, John Rush, William Wells, Bernis McNeal, Pete Pfeifer, Ed. L. Dryden, Clifford Brown, John Boyer, Dale Partridge, J. N. Murray, Harry Lett and Earl Brittain and thereafter on said day by agreement of the parties plaintiffs and defendant and the consent of the court, and after the evidence had been partially heard by said jury, said jury was discharged and said cause, by agreement, submitted to the court for trial and the court, after having heard additional evidence and having heard the evidence in full and having duly considered the same, did, on the first day of May, 1934, the same being the 18th day of the regular April, 1934, Term of said Circuit Court, find the issues in said cause for plaintiffs, and that plaintiffs are entitled to recover of and from said [fol. d] defendant on the policy or certificate of insurance sued on and introduced in evidence in the sum of Eleven

Hundred (\$1100.00) Dollars, and that said defendant is indebted to plaintiffs in that sum, past due and unpaid, on account of said insurance.

Wherefore, it is by the court ordered and adjudged that plaintiffs have and recover of and from said defendant said debt in the sum of Eleven Hundred (\$1100.00) Dollars, together with their costs taxed in this cause, and that plaintiffs have execution.

STATE OF MISSOURI,

County of Nodaway, ss:

I, William R. Tilson, Clerk of the Circuit Court within and for the County of Nodaway aforesaid, do hereby certify that the foregoing is a true copy of the judgment and order granting an appeal in the cause therein named, as fully as the same appears of record in my office.

In Witness Whereof, I have hereunto set my hand as Clerk, and affixed the seal of our said Circuit Court, at office in the City of Maryville, this 7th day of September, 1934.

(Signed) Wm. R. Tilson, Circuit Clerk. (Seal.)

[fol.e] On the same day, to-wit, December 4, 1936, the appellant filed its printed abstract of record, in words and figures, as follows, to-wit:

{fol. 1] [File endorsement omitted]

IN SUPREME COURT OF MISSOURI

SEPTEMBER TERM, 1936

No. 34182

WILLIAM F. BOLIN, et al., Respondents,

vs.

THE SOVEREIGN CAMP OF THE WOODMEN OF THE WORLD, a
Corporation, Appellant

Appeal from the Nodaway County Circuit Court.

**Appellant's Statement, Abstract of Record, Brief and
Argument—Filed December 4, 1936.**

STATEMENT

The defendant, the Sovereign Camp of the Woodmen of the World, is a Fraternal Beneficiary Association organized and incorporated under the laws of Nebraska, having a lodge system and a ritualistic form of work. It has no capital stock and is conducted for the benefit of members of the Society and not for profit. It has a representative [fol. 2] form of government and the administrators of the Society are selected by the membership and their duties are prescribed by the laws of the Society. The laws governing the Society are enacted by the members of the Society through their chosen representatives. Formerly the representatives assembled biennially in what is known as the "Sovereign Camp." At a meeting of the Sovereign Camp held in 1893, a resolution was adopted which became effective in July of that year and became Section 82 of the By-Laws of 1895. Said Section 82 being as follows:

Life Membership Certificates

"Section 82. Life Membership Certificates shall be issued by the Sovereign Camp to all members of the Woodmen of the World, under the following conditions:

When the certificate of a member who has entered the Order between the ages of 16 and 33 has been in force and binding for 30 years, or of members entering between 34 and 42 years of age when the certificate has attained the

age of 25 years, and all members entering the Order over 43 years of age when the certificate has attained the age of 20 years; and that after the said Life Membership Certificate has been issued the Life Member shall not be liable for Camp dues, assessments or General Fund dues. That the proper officers of the Sovereign Camp shall issue quarterly, assessment calls upon all members of the Woodmen of the World, regardless of jurisdiction or nation, for a sufficient amount to pay all death claims accruing during the previous three [fol. 3] months, for said Life Members who have died during said time, under this provision and that any Life Member visiting a Camp shall be greeted with the honors of the Order, and shall be seated at the right of the Consul Commander, and shall also be entitled to wear a Life Membership badge, to be designed and prescribed by the Sovereign Camp."

Soon after the adoption of Section 82, it was discovered that the By-Law was invalid and was repealed in 1899. In 1896 and on or about the 30th day of May of that year, Pleasant Bolin made application for membership in the Society and also for his beneficiary certificate in the sum of \$1,000.00. The application provided that the assured should pay all assessments prescribed by the By-Laws, as they then existed or as they might thereafter be amended and failing to do so, the certificate would automatically become void. There was no "payments to cease" clause in the application. Agreeably to the application, the Society issued a certificate to the said Pleasant Bolin and pursuant to the resolution and pursuant to Section 82 above referred to, the Society stamped, in the upper right-hand corner of the certificate, the words "payments to cease after 20 years." At the time Pleasant Bolin made his application for membership he was 47 years of age and under the laws as then existing and as subsequently modified, he was required to make the Society, the following payments, exclusive of the local Camp dues:

From June, 1896, to August, 1899, \$1.05 per month; from September, 1899, to August, 1901, \$1.20 per month; from September, 1901, to August, 1915, \$1.30 per month; from [fol. 4] September, 1915, to June, 1916, \$1.70 per month and had he continued a member of the Society in good standing, he would have been required to pay \$1.70 per month to September, 1917, and from October, 1917, to December,

1919, \$1.80 per month, but no assessments were paid by him after June, 1916, so that the actual money paid into the Society by Mr. Bolin, exclusive of local Camp dues, was \$40.90 from June, 1896, to August, 1899; \$27.60 from September, 1899, to August, 1901; \$217.10 from September, 1901, to August, 1915; and \$17.00 from September, 1915, to June, 1916, making a total of \$302.65. As stated by plaintiffs, Pleasant Bolin was entitled to a paid-up certificate, under and by virtue of the terms and provisions of Section 82; he would have been entitled to a paid-up certificate in the sum of \$1,000.00 and \$100.00 to erect a tombstone at his grave upon payment to the Society, during the 20 years, of \$302.65 and at the time the payments were concluded, Pleasant Bolin was 67 years of age.

As above stated, Section 82, which was Section 68 of the By-Laws of 1897, was repealed at the biennial session held in 1899; said session of the Sovereign Camp being held in Memphis, Tenn. The action repealing the Section was taken by two-thirds of the members constituting the Sovereign Camp. The said Pleasant Bolin continued to pay his assessments after the repeal of said By-Law for about 17 years. He defaulted in July, 1916, and continued in default until the time of his death in July, 1933.

The plaintiffs, who are the children and heirs-at-law of Pleasant Bolin, claim that the "payments to cease after [fol. 5] twenty years" clause was valid and binding between Pleasant Bolin and the Society and conveyed substantial rights to the assured and that under said "payments to cease" clause and the By-Law, authorizing the issuance of a paid-up certificate, the said Pleasant Bolin became entitled to a paid-up certificate in July, 1916, and that, therefore, he was not in default at the time of his death.

The Supreme Court of the State of Nebraska has declared that the said By-Law, Section 82 of the Constitution and By-Laws of 1895, the same being Section 68 of the Constitution and By-Laws of 1897, was ultra vires the corporation and void and that no one obtained any rights thereunder. It further held that the Society had no authority to issue a paid-up certificate and that the attempt to do so was in violation of the Laws of Nebraska and the Articles of Incorporation of the Society.

The Society, therefore, contends that the said "payments to cease after twenty years" clause was void ab initio and

conveyed no rights to the said Pleasant Bolin or his heirs and that its repeal deprived neither party of any right whatever.

The Society further contends that the failure of the said Pleasant Bolin to make the payment due in July, 1916, automatically suspends him and that his policy lapsed at that time and he was not a member in good standing at the time of his death. That his policy lapsed with his failure to make the payment due in 1916 and that therefore, the Society is under no obligation whatever to the heirs of the said Pleasant Bolin.

[fol. 6] The Society further contends that the decision of the Supreme Court of Nebraska is binding on the Courts of Missouri under and by virtue of the provisions of the Constitution of the United States, Article 4, Section 1, commonly referred to as the "Full faith and credit" clause.

The Society further contends that the repeal of said clause was an act of the members of the Society and that every member thereof participated therein, had knowledge thereof and is bound thereby.

It will, therefore, be seen that the sole question to be determined in this case, is whether or not the "payments to cease after twenty years" clause was valid and binding between the Society and the said Pleasant Bolin and whether or not the plaintiffs, as heirs of the said Pleasant Bolin, can rely upon and recover under the provisions of said clause.

[fol. 7] ABSTRACT OF THE RECORD PROPER

IN CIRCUIT COURT OF NODAWAY COUNTY, MISSOURI, OCTOBER
TERM, 1933

WILLIAM F. BOLIN, EDWARD E. BOLIN, SAMUEL A. BOLIN,
JOHN O. BOLIN, SARAH B. CAMPBELL, JAMES D. BOLIN, ELAINE
SCOTT, PERRY BOLIN, and HOMER BOLIN, FRANK BOLIN, KEITH
BOLIN and DEAN BOLIN by Iva Dale Bolin, Their Natural
Guardian, Plaintiffs,

VS.

SOVEREIGN CAMP OF THE WOODMEN OF THE WORLD, a Corpora-
tion, Defendant

PETITION

Plaintiffs state that Pleasant Bolin died on or about the
18th day of July, 1933, at Nodaway County, Missouri, and

that his wife, Sarah M. Bolin, died on or about the 2nd day of June, 1933, and prior to his death; that the said Pleasant Bolin left surviving him his children, Frank W. Bolin, Edward E. Bolin, Samuel A. Bolin, John O. Bolin, Sarah B. Campbell and James D. Bolin, and the descendants of a deceased son, Allen P. Bolin, who died May 1, 1933, leaving surviving him his children, who are grandchildren of the [fol. 8] said Pleasant Bolin, namely, Elaine Scott and Perry Bolin and the following minor children: Homer Bolin, Frank Bolin, Keith Bolin and Dean Bolin, who have no regularly appointed guardian or curator and who bring this suit by and through Iva Dale Bolin, their mother and natural guardian.

That the defendant is and was at all times herein mentioned a corporation engaged in the business of life insurance, with its home office in the City of Omaha in the State of Nebraska.

Plaintiffs further state that in consideration of the premiums paid and to be paid by Pleasant Bolin, said defendant on the 5th day of June, 1896, duly executed and delivered to the said Pleasant Bolin, its certificate of membership and policy of insurance whereby the said Pleasant Bolin became a member of said association at a division thereof at Arkoe in Nodaway County, Missouri, whereby, upon the death of the said Pleasant Bolin, his then wife, Sarah M. Bolin, became entitled to receive from said defendant and said defendant became obligated to collect into a beneficiary fund and pay over to the said Sarah M. Bolin on the death of the said Pleasant Bolin the sum of One Thousand (\$1,000.00) Dollars, and in addition thereto, a further and additional sum of One Hundred (\$100.00) Dollars for the purpose of providing a monument for the grave of the said Pleasant Bolin upon his death, aggregating the total indebtedness of said defendant for and on account of the certificate in the sum of Eleven Hundred (\$1100.00) Dollars.

[fol. 9] That said certificate was numbered by said defendant No. 8955 Mo., and by the terms of said certificate the rate per month to be paid by the said Pleasant Bolin for said insurance upon his life, as aforesaid, was the sum of ninety cents (90¢) per month from and after said 5th day of June, 1896, for a period of twenty years when, by the terms and provisions of said policy of insurance and certificate, as aforesaid, said payments were to cease and terminate and said Pleasant Bolin, by the terms and provisions of said

policy and certificate, was not required to pay any other or further sum for or on account of said insurance upon his life to the amount of One Thousand (\$1,000.00) Dollars, as aforesaid, and for or on account of said One Hundred (\$100.00) Dollars for monument, as aforesaid, said certificate and policy of insurance was, upon said payments for said period of twenty years, to continue in full force and effect until the death of the said Pleasant Bolin, which said certificate was duly executed by said defendant under its seal and was duly signed and approved by the camp or division representing said defendant at Arkoe in Nodaway County, Missouri, known as Camp No. 166 of the State of Missouri, which was a division and part of the organization of said defendant, which said certificate and policy of insurance, as aforesaid, so issued by defendant, as aforesaid, is herewith filed and made a part of this petition.

Plaintiffs further say that no other or further beneficiary [fol. 10] was designated in said policy of insurance other than the said Sarah M. Bolin, who died prior to the death of the said Pleasant Bolin, and that these plaintiffs thereby became and are entitled to collect and receive the proceeds of said certificate and policy of insurance, as aforesaid, in the aggregate sum of Eleven Hundred (\$1100.00) Dollars, as before mentioned.

That the said Pleasant Bolin paid in full for more than said period of twenty years as required by the terms of said certificate and policy all premiums, dues, charges or other obligations required by him to be paid under the terms and provisions of said certificate and policy of insurance, and in all respects complied with all of the conditions and provisions of said policy on his part up to the time of his death, and that, after the death of the said Pleasant Bolin, plaintiffs have informed defendant thereof and have offered to make due proof thereof in any manner or form required by defendant, but defendant has refused to receive or accept the same; that said sum of Eleven Hundred (\$1100.00) Dollars so named in said contract and policy of insurance has become due and payable to plaintiffs and has been demanded by plaintiffs of defendant and defendant has failed and refused to pay the same or any part thereof.

Wherefore, Plaintiffs pray judgment against said defendant for said sum of One Thousand (\$1,000.00) Dollars so due on said policy or certificate of insurance, as aforesaid, together with an additional sum of One Hundred (\$100.00)

[fol. 11] Dollars for and on account of the provisions of said policy for the payment of a monument for the grave of the said Pleasant Bolin, aggregating the total sum of Eleven Hundred (\$1100.00) Dollars, as aforesaid, together with interest thereon at the rate of six per cent per annum from said 18th day of July, 1933, with costs of suit.

By Shinabargar, Blagg, Livengood & Weightman and
A. F. Harvey, Attorneys.

Summons was regularly issued on said August 31, 1933, and in due course served on the Superintendent of Insurance and on Oct. 2, 1933, the same being the first day of the regular October Term of the Nodaway County Circuit Court, the defendant appeared and filed answer in said cause; said cause was continued to the January Term of said Court and at the January Term of said Court, said cause was continued to the April Term, 1934. At said April Term, the defendant filed an amended answer, which said amended answer is in words and figures as follows, to-wit:

IN CIRCUIT COURT OF NODAWAY COUNTY

[Title omitted]

AMENDED ANSWER

Comes now the defendant in the above entitled cause and [fol. 12] for its first amended answer to the petition of the plaintiffs, states that it is a fraternal beneficiary Association, organized as such under and by virtue of the laws of the State of Nebraska, with a lodge system, a ritualistic form of work and representative form of government, without capital stock, and transacting its business without profit and for the sole and mutual benefit of its members and their beneficiaries, and provides for the payment of death benefits, its certificates being issued to its members only; that the funds from which the payment of such benefits is made and the funds for the expenses of the defendant in its operation are derived from dues, assessments or monthly payments collected from its members; that the payment of death benefits, by the laws of the defendant, are limited to the family, heirs, blood relatives or dependents of members; that said Association has adopted and is governed by a con-

stitution, laws and by-laws; that said Association has been authorized to do business as such fraternal beneficiary association in the State of Missouri, under the laws of this state as set forth in Article 13, Chapter 37, Revised Statutes of Missouri, 1929.

Further answering defendant admits that Pleasant Bolin died on the 18th day of July, 1933, and states that Pleasant Bolin on or about the 26th day of May, 1896, made application for membership in said Association, defendant herein, and in said application agreed that, if accepted as a member, the application and all of the provisions of the constitution, laws and by-laws, of the Association then in force or there-[fol. 13] after adopted should form a part of any beneficiary certificate which might be issued to him by the Association. The said Pleasant Bolin also agreed to pay all assessments and dues for which he might become liable while a member of the Association, or which were required to be paid by the constitution, laws and by-laws, and that his being suspended for failure to make said payments, or failing to comply with the provisions of said constitution, laws and by-laws then in force or thereafter adopted should make the beneficiary certificate null and void and forfeit all rights of any person or persons named therein or claiming thereunder.

Defendant further states that after the receipt and acceptance of said application, and after the applicant was duly elected and initiated a member of said Association, and in consideration of the warranties and agreements contained in said application, the said Association issued to the said Pleasant Bolin its beneficiary certificate No. 8955-Missouri. This certificate provided, on its face, that it was issued and accepted subject to all the conditions on the back thereof, and all of the conditions named in the constitution and laws of the Association, and liable to forfeiture, if the decedent should not comply with said conditions, constitution, laws and by-laws, and such by-laws and rules as were or might thereafter be adopted by the Sovereign Camp; that among other provisions on the back thereof, it was provided that this certificate was issued in consideration of the representations and agreements made by the decedent in his application to become a member, [fol. 14] and in consideration of his agreements to pay all of the assessments and dues that might be levied during the time he should remain a member of the Woodmen of

the World; and that if the dues or beneficiary fund assessments levied against the decedent should not be paid to the Clerk of his Camp, as required by the constitution and laws of the order, this certificate should be null and void and continue so until payment was made and the requirements of said constitution and laws had been fully complied with. Said beneficiary certificate also provided that the application, the certificate, constitution, laws and by-laws then in force or thereafter adopted should constitute the agreement between the Association and the said Pleasant Bolin, plaintiff herein.

Further answering, defendant states that at the time of the issuance of the certificate sued on, the defendant was operating under a charter granted to it by the State of Nebraska, under and by virtue of the laws of the State of Nebraska, and particularly Chapter 18 of the Compiled Laws of said State, said Chapter 18 being an act passed by the Legislature Assembly of that State, and approved on the 29th day of March, 1887, and being as follows:

Corporations, Exempting Secret Societies

An Act to exempt secret societies and associations from the requirements of Chapter Sixteen (16) of the Compiled Statutes of 1885, to define the duties, powers, and obligations of such societies and associations, and to provide [fol. 15] penalties for violations thereof. Be it enacted by the Legislature of the State of Nebraska.

Section 1

That any secret society or association, the management and control of which is confined to the membership of any secret society or order, heretofore organized or which may hereafter be organized, which in addition to the benevolent and fraternal features thereof, shall also issue certificates of indemnity calling for the payment of a certain sum, known and defined, in case of the death, disability, or sickness of any of its members, to the wife, widow, orphan or orphans, or other persons dependent upon such members, shall be exempt from the provisions of chapter twenty-five (25) of the Revised Statutes of 1866 of the Territory (now State) of Nebraska, the same being chapter sixteen (16) of the Compiled Statutes of 1885;

Provided, That such secret society or association as aforesaid shall comply with all the requirements of this act.

Section 2

Within thirty (30) days after the taking effect of this act, such society as aforesaid shall, by its presiding officer or recording officer, or both of them, file a certificate in the office of the auditor of public accounts setting forth the total number of members in good standing in such society or association at the date of the taking effect of this act, the name, title, and postoffice address of each of the chief [fol. 16] officers of such society or association; the plan of assessment upon which funds are provided to pay the certificate of indemnity issued by such society or association, together with a certified copy of the constitution and by-laws of such society. If, from such statements, the auditor of public accounts shall be satisfied that such society or association has a sufficient membership to pay a certificate so issued by such society or association in case of the death of any of its members, by its usual method of assessments, he shall issue to such society or association a certificate authorizing it to transact its business for one year.

Section 3

On the first day of January of each year, or within fifteen days thereafter, such society or association shall, by its presiding or recording officer or both of them, file with the auditor of public accounts, a sworn statement, setting forth the total number of members in good standing on the first day of January of that year; the total number of members who have been suspended for non-payment of dues, or assessments for the twelve months next preceding the date of the report, the name of each member deceased during the year next preceding the date of the report, together with the amount of money paid to each, the number of claims resisted and the reasons for resisting the payment thereof; the total amount collected for the payment of certificates of indemnity hereinbefore provided for; the amount due and unpaid upon certificates of deceased members, the total [fol. 17] amount on hand in such funds and the amount paid out in such fund. If the auditor shall be satisfied that such society or association has a sufficient membership to pay its certificate in full, in case of the death of any of its members, by its usual method of assessment, he shall issue his certificate authorizing such society or association to

transact its business for the term of one year from the first day of January next preceding the date of the report.

Section 4

If, at any time, the auditor shall be credibly informed that the membership of such society or association has fallen below a number sufficient to produce the amount required to pay a certificate of membership in full, in case of the death of any of its members, he shall cause an investigation to be made of the affairs of such society, or association, at the expense of such society or association, and if he shall become satisfied that its membership has fallen below the number required as aforesaid, he shall revoke the certificate provided for in section three of this chapter, and it shall be unlawful for such society or association to further transact any business within the State of Nebraska.

Section 5

Before any change in the constitution or by-laws of any such society or association shall take effect, a copy of the same shall be filed in the office of the auditor of public accounts.

[fol. 18]

Section 6

All moneys collected by any such society or association for the payment of its certificates of indemnity, shall be used for that purpose, and none other.

Section 7

Any person or persons violating the provisions of this act shall, upon conviction thereof, be imprisoned in the penitentiary for not more than five nor less than one year.

Section 8

This act shall only apply to secret, benevolent, fraternal societies.

Section 9

Any officer of any such society or association, who shall embezzle or appropriate any of the moneys or property of any such society or association to his own use, shall be deemed guilty of embezzlement, and shall, upon conviction thereof, be punished accordingly.

Section 10

“An emergency exists, this act shall take effect and be in force from and after its passage.

Approved March 29, 1887.

Further answering this defendant states that it was organized as a corporation under the laws of Nebraska in January, 1891, as a fraternal beneficiary association, a copy of the articles of incorporation being attached hereto, marked “Exhibit A,” and made a part hereof; that said [fol. 19] articles of incorporation were duly filed for record in February, 1891, in accordance with the laws of Nebraska, and all of the laws of the state fully complied with with respect thereto; that under said articles of incorporation and under the laws of Nebraska with respect to beneficiary certificates, this Association was authorized to create a fund from which, upon reasonable and satisfactory proof of death of a member in good standing, holding a beneficiary certificate, there should be paid the proceeds of one assessment upon surviving members, from whom the same could be legally collected, a sum not to exceed \$3,000.00, the same to be paid to the designated beneficiary in said certificate; that by reason thereof, this defendant states that it had no power, and its officers and agents had no power, to issue beneficiary certificates except in accordance with its articles of incorporation and the laws of Nebraska with respect thereto; that under its articles of incorporation it had the power to issue beneficiary certificates to its members, the amount thereof to be paid upon the death of a member in good standing to the beneficiary named in said beneficiary certificate, the proceeds of one assessment upon surviving members, and it had no right or power to issue any other kind or class of certificates.

Further answering this defendant states that at a meeting of the Executive Council, held on the 18th day of January, 1893, a purported resolution was passed, which said resolution became Section 82 of the by-laws, and which said Section read as follows:

[fol. 20]

Section 82

“Life membership certificates shall be issued by the Sovereign Camp to all members of the Woodmen of the World under the following conditions:

When the certificate of a member who has entered the order between the ages of 16 and 33 has been in force and binding for thirty years, or of members entering between 34 and 42 years of age when the certificate has attained the age of twenty-five years, and all members entering the order over 43 years of age when the certificate has attained the age of twenty years, and that after the said life membership certificate has been issued the life member shall not be liable for camp dues, assessments or general fund dues; that the proper officers of the Sovereign Camp shall issue quarterly assessment costs upon all members of the Woodmen of the World, regardless of jurisdiction or nation, for a sufficient amount to pay all death claims accruing during the previous three months for said life members who have died during said time under this provision, and that any life member visiting a Camp shall be greeted with honors of the order and shall be seated at the right of the Consul Commander, and shall also be entitled to wear a life membership badge to be designed and prescribed by the Sovereign Camp."

This defendant states that the said Executive Council had no authority or power to pass said resolution, and that said Sovereign Camp had no power or authority to enact such [fol. 21] by-laws, for the reason that the same was not in accordance with its articles of incorporation, and, in fact, was contrary to the same and was ultra vires and void, because no power existed in said corporation to issue beneficiary certificates except in accordance with the articles of incorporation, and no power existed to issue what is known as "limited payment insurance" or any other beneficiary certificate, except upon payment by members holding the same of all dues and assessments levied during the lifetime of such member and while he continued a member of the order.

Defendant further states that at a meeting of the Sovereign Camp of the order, held in March, 1895, the above resolution was passed, the same not to be effective, however, until July of said year, but with respect thereto, this defendant states that the Sovereign Camp had no authority or power to pass said resolution, or to authorize the issuance of so-called "payment-to-cess" certificates for that under the articles of incorporation of the defendant no beneficiary certificates could be issued, except upon payment by members of the dues and assessments during the entire period of the member's life and while he continued

a member of the order; that the certificate issued to plaintiff was issued under and by virtue of the above resolution and by-laws; that the same was issued without authority and contrary to the articles of incorporation and the laws of Nebraska under which this Association was organized, and that the clause therein providing that payments should cease after twenty years was ultra vires and void.

[fol. 22] Defendant further states that one Prince L. Trapp, a citizen and resident of Nodaway County, Missouri, was issued a certificate of the kind and character of the certificate sued on, said certificate being issued on or about the 11th day of March, 1895, the said Prince L. Trapp then being a member of Maple Camp No. 107, located at Graham, in Nodaway County, Missouri, and that payments were made thereon, as provided in said certificate; that afterwards and on or about the 29th day of March, 1916, the said Prince L. Trapp filed suit in the District Court of Douglas County, Nebraska, to compel this defendant to issue a paid-up life certificate as in said certificate provided, and that in said suit this defendant answering, denied the authority of the Association to enact the above mentioned by-law, declared that the same was ultra vires and void, and that the plaintiff could not claim the benefit of the "payment-to-cess" clause; that in said suit the cause being submitted to the District Court of Douglas County, Nebraska, the said District Court held that said by-law was ultra vires and void, and that the said "payment-to-cess" clause in said certificate was null and void and rendered judgment for defendant and dismissed the suit, and said cause being regularly appealed to the Supreme Court of Nebraska, the said Supreme Court of the State of Nebraska, in said cause, the same being reported as Trapp v. Sovereign Camp of the Woodmen of the World, in the 102 Nebraska at Page 562, 168 N. W. 191, declared said Section 82, in so far as it undertook to exempt members from the payment of dues after twenty years, was [fol. 23] ultra vires, and that said provision in policies issued thereunder was null and void; that under the laws of the state of Nebraska and the articles of incorporation of this defendant, that defendant had no authority to issue certificates of the kind and character sued on herein; that it had authority to issue beneficiary certificates to its members, the amount thereof to be paid upon the death of a

member in good standing to the beneficiary named in said beneficiary certificate, the proceeds of one assessment upon surviving members, but had no right or power to issue any other kind or class of certificate, and that it had no right or authority to issue the kind and class of certificate sued on. To the same effect is the case of *Haner v. Lodge A. O. U.*, 102 Nebr. 563, 168 N. W. 189.

Further answering, defendant says that under Section 1 of Article IV of the Constitution of the United States, full faith and credit must be given to this decision of the Supreme Court of Nebraska by the Courts of this state.

Further answering, defendant says and avers the facts to be that the constitution, laws and by-laws of the Association provided that each member of the Association should pay to the Financial Secretary of his Camp one annual assessment each year, or one monthly installment of assessment each month, and further provided that if the member failed to make any such payment on or before the last day of the month such member shall thereby become suspended; his beneficiary certificate shall be void, the contract between such person and the Association shall thereby completely terminate, and all moneys paid on account of such [fol. 24] membership shall be retained by the Association as its liquidated proportionate part of the costs of doing business and the cost of the protection furnished on the life of said member from the delivery of his certificate to the date of his suspension.

Further answering, defendant says that the said Pleasant Bolin paid the monthly installments as required by the Constitution, laws and by-laws up to and including the month of June, 1916; that he made no further payments, and that by reason of the failure to make the payment due in the month of July, 1916, the said member, Pleasant Bolin, thereby became suspended, his beneficiary certificate became void, the contract between the said Pleasant Bolin and this Association completely terminated, and said certificate became, and, at the time of the death of the said Pleasant Bolin, was null and void and of no force or effect. That by reason thereof, all rights of the plaintiffs to any benefits under and by virtue of the issuance of said certificate ceased to exist, and the plaintiffs had and have no right to any claim or demand upon or against defendant; that the provision of the constitution, laws and by-laws

authorizing the issuance of a beneficiary certificate containing a clause that payments were to cease after a certain time, was and is ultra vires and void, in that said Section was self-inconsistent, contrary to the articles of incorporation issued to defendant and contrary to the laws of the State of Nebraska, and of no force and effect, as was declared by the Supreme Court of Nebraska in the case of *Trapp v. Woodmen of the World* mentioned, and plaintiffs [fol. 25] cannot claim the benefit thereof.

Wherefore, having fully answered, defendant asks to be discharged with its costs.

By Wright & Ford, Attorneys for Defendant.

Afterwards and on the 13th day of April, 1934, the plaintiff filed a motion to strike out certain paragraphs of defendant's answer; said motion being taken up and considered by the Court, was, by the Court, overruled.

Thereupon and on the 13th day of April, 1934, the plaintiff filed a reply, which said reply is in words and figures as follows, to-wit:

IN CIRCUIT COURT OF NODAWAY COUNTY

[Title omitted].

REPLY:

Come now the plaintiffs in the above entitled cause, and, for reply to the answer of defendant herein, deny each and every allegation, fact and statement in said answer alleged or contained.

These plaintiffs, for further reply, aver and say that the certificate or policy of insurance sued on in plaintiffs' petition in this cause was issued to and delivered to Pleasant Bolin in the County of Nodaway and State of Missouri, on or about the 5th day of June, 1896; that the said Pleasant Bolin and his wife, Sarah M. Bolin, were, at the time of the delivery of said policy of insurance, residents and citizens [fol. 26] of the State of Missouri and continued to be and remain residents and citizens of the State of Missouri until the death of each of them, and never were at any time residents or citizens of the State of Nebraska, and the beneficiaries thereafter, who were entitled to said insurance upon the death of the said Sarah M. Bolin, were not any of them at any time residents of the State of Nebraska.

These plaintiffs, for further reply, say that said policy of insurance was, at the time of its issuance to the said Pleasant Bolin and delivery to him in the State of Missouri, subject to and governed by the Insurance Laws of the State of Missouri, as of June 5, 1896, and the Laws of said State of Missouri, and has continued to be and now is subject to and governed by the Laws of said State of Missouri and is not affected, subject to or governed by any of the Laws of the State of Nebraska or any of the decisions of the Courts of said State.

These plaintiffs, for further reply, aver and say that said defendant, at the time of the issuance and delivery to Pleasant Bolin of the policy of insurance sued on in this cause, did not have any license or authority as a corporation or otherwise to transact business in the State of Missouri, and that said policy, as aforesaid, was subject to and governed by the General Insurance Laws of the State of Missouri; that the said Pleasant Bolin has, at the time required and in the way and manner required, fully and completely performed and complied with in every respect and particular all of the matters and things by him required to be had, [fol. 27] done and performed and has paid, prior to the 6th day of June, 1916, all of the premiums, dues, assessments or other obligations by him required to be paid, and that the said defendant has received and accepted the same in accordance and pursuant to the terms and provisions of said policy of insurance, and that all of the payments, amounts, matters or things required to be made by the said Pleasant Bolin or to be had, done or performed by him, were fully paid, performed and completed prior to the first day of July, 1916, and the said Pleasant Bolin or anyone for him was not required thereafter to pay any other or further obligations, dues or premiums of any kind or nature or to do or perform any other act or thing thereafter, and that all the provisions and requirements of said policy having been fully complied with, had, done and performed by the said Pleasant Bolin prior to July 1, 1916, said defendant is estopped to say that any of the obligations, matters or things provided for or set out in said policy of insurance were ultra vires on its part, and these plaintiffs deny that any of said matters or things are in fact ultra vires or void,

but aver that said policy and all of its provisions are in full force and effect, and pray for judgment against the said defendant in accordance with the prayer of their petition.

Shinabargar, Blagg, Livengood & Weightman, A. F.
Harvey, Attorneys for Plaintiffs.

[fol. 28] Afterwards and on the same day, the parties, plaintiffs and defendant, announcing ready for trial, a jury was empaneled and the evidence heard in part, whereupon, by agreement of parties, the jury was discharged and the cause submitted to the Court and was set over until May 1st for further hearing of evidence.

FINDING OF COURT

And afterwards and on the first-day of May, the same being the 18th day of the regular April Term of said Court, the evidence in said cause was completed and after due deliberation, the Court, sitting as a jury, found for the plaintiff.

MOTION FOR NEW TRIAL

And afterwards and on the same day, the defendant filed a motion for a new trial.

ORDER OVERRULING MOTION FOR NEW TRIAL

And afterwards and on the 28th day of May, the same being the 19th day of the regular April, 1934 Term of said Court, the said motion for a new trial was taken up by the Court and duly considered and, by the Court, overruled.

JUDGMENT

And afterwards and on the same day, judgment was rendered on the finding; said judgment being for the sum of \$1,100.00 and against the defendant.

RECITAL AS TO APPEAL, ETC.

Thereupon and on the same day and during said April Term of the Circuit Court of Nodaway County, Missouri, an affidavit in appeal was filed and an appeal to the Su-[fol. 29] preme Court prayed by the defendant; said affidavit being found to be in due form and an appeal was allowed to the Supreme Court in the State of Missouri. The defendant was awarded until and during the next term of the said Circuit Court to file his Bill of Exceptions. Time for filing Bill of Exceptions was extended from time to time and on the 6th day of July, 1936, the same being the — day of the regular April, 1936 Term of the said Nodaway County Circuit Court, the defendant tendered into Court his Bill of Exceptions, which was examined, approved, signed and allowed by the Court and ordered made a part of the record in said cause, which was accordingly done.

[fol. 30] IN CIRCUIT COURT OF NODAWAY COUNTY

[Title omitted]

Bill of Exceptions

Be It Remembered That On the 13th day of April, A. D. 1934, the same being the fourth day of the regular April, 1934, term of the aforesaid circuit court, the above entitled cause coming on regularly for hearing before Hon. D. D. Reeves, Judge of the Fourth Judicial Circuit of Missouri, and, Ex Officio Judge of the aforesaid circuit court, and a jury, the following further proceedings were had and done therein.

APPEARANCES

Messrs. J. S. Shinabargar, W. A. Blagg, L. L. Livengood, Ray Weightman and A. F. Harvey appeared for and on behalf of the plaintiff; and Messrs. George P. Wright and M. E. Ford appeared for and on behalf of the defendant.

[fol. 31] Thereupon, the Plaintiffs, to sustain the issues on their part arising, introduced the following evidence:

JAMES DEWITT BOLIN, having been produced, sworn and examined as a witness on behalf of the plaintiff, testified as follows, to-wit:

Direct examination.

By Mr. Harvey, Counsel for Plaintiffs:

My name is James Dewitt Bolin and I live at Bolckow, Missouri. My father was Pleasant Bolin and he died July 18, 1933. My mother was Sarah Margaret Bolin. She died June 2, 1933. They left five boys and one girl; Frank Bolin, Ed Bolin, Art Bolin, Ort Bolin, Mrs. Bashie Campbell and myself. Allen P. Bolin, another son, was dead, leaving as his children and heirs, Elaine Bolin, Perry Bolin, Homer Bolin, Frank Bolin, Keith Bolin and Dean Bolin. His wife, Iva Dale Bolin, is still living. My father, Pleasant Bolin, had an insurance policy with the Woodmen of the World.

Mr. Harvey: I think that is all.

Counsel for Defendant: No cross examinations.

HARRY WAMSLEY, having been produced, sworn and examined as a witness on behalf of the plaintiff, testified as follows, to-wit:

Direct examination.

By Mr. Harvey, Counsel for Plaintiff.

My name is Harry Wamsley and I live six miles south of Maryville, Missouri, and have lived there for fifty-two years. I knew Pleasant Bolin in his lifetime. There was a Camp of [fol. 32] the Woodmen of the World at Arkoe, it being Camp Number 166. I was Consul Commander for six or seven years. Consul Commander is the presiding officer. Pleasant Bolin had a membership and an insurance policy in that institution.

Thereupon, a certain certificate was marked by the reporter Plaintiffs' Exhibit 1, and it was shown to the witness and his attention called to a signature thereon.

A. That is my signature. This certificate came from the Sovereign Camp in Omaha. The certificate came about the

time the Camp was organized. I think Mr. Bolin was a charter member. The certificate is dated June 3, 1896, and it probably came a day or so later than that. It was received by the Clerk of the Camp, Mr. Colter.

Q. Do you know what was done with it after it was received by mail?

A. Well, of course, it was my duty to sign it and notify him that his certificate was there and for him to come and get it.

Q. Now, did you and Mr. Colter sign that paper?

A. Yes, sir.

Q. Where was it signed?

A. Signed in the lodge room at Arkoe, in Nodaway County, Missouri.

Q. Then after it was signed by you and Mr. Coulter, what was done with that certificate?

A. It was delivered to Mr. Bolin.

Q. Where was it delivered?

A. It was delivered in the hall at Arkoe a day or so later, at the first meeting.

[fol. 33] Q. From your knowledge, did you learn the printed signature of the chief officers that is as J. Root and J. T. Yates?

A. Yes, sir.

Q. Are those signatures as you learned them?

A. Yes, I think the Root signature, I think is a lithograph, and the Yates signature, I think, is by pen and ink.

Q. As to this seal on it, was that there when it came?

A. Yes.

Q. Is that the usual form?

A. Yes, that is the usual form.

Mr. Harvey: I think that is all.

Counsel for Defendant: No questions.

Mr. Harvey, Counsel for Plaintiff: I want to offer in evidence Plaintiffs' Exhibit 1.

Counsel for Defendant: No objections.

The Court: Considered in evidence.

PLAINTIFFS' EXHIBIT 1

Beneficiary Certificate

Sovereign Camp.

Number

8955

Amount \$1,000.00.

Mo.

Rate \$.90.

Age 47.

Payments to cease after 20 years

Woodmen of the World

This Certificate issued by the Sovereign Camp of the Woodmen of the World by its authority Witnesseth That [fol. 34] Sovereign Pleasant Bolin a member of Camp No. 166 located at Arkoe State of Missouri, is, while in good standing as a member of this Fraternity entitled to participate in its Beneficiary Fund to the amount of One Thousand Dollars payable at his death to his wife, Sarah M. Bolip, by this Sovereign Camp unless said Camp shall have been set off in a separate Beneficiary Jurisdiction. In that event, payments shall be made by the Head Camp of that jurisdiction. And there shall also be paid the sum of One Hundred Dollars for the placing of a Monument at his grave. This Certificate is issued and accepted subject to all the conditions on the back hereof, and all the conditions named in the Constitution, and Laws of this Fraternity and liable to forfeiture if said Sovereign shall not comply with said Conditions, Constitution, and Laws and such By Laws and rules as are or may be adopted by the Sovereign Camp, Head Camp or the Camp of the jurisdiction of which he is a member at the date of his decease. This Certificate shall be incontestable after one year from date thereof on the grounds of irregularities, errors or omissions in the application, examination or introduction, provided the member to whom same is issued shall have complied with all its requirements.

(Seal.) In Witness Whereof We have hereunto affixed our official signatures and impressed the seal of the Sovereign Camp.

[fol. 35] Done at Omaha, State of Nebraska, this 3rd day of June A. D. 1896

J. Root
Sovereign Commander.

J. T. Yates,
Sovereign Clerk.

He has made all payments required and has been introduced as a member of this Camp, signed this 5th day of June, A. D. 1896.

Harry A. Coulter
Clerk

Harry Wamsley
Consul Commander

(Seal.) Arkoe Camp No. 166, State of Missouri.

(On the reverse side appears the following:)

Conditions referred to and made a part of this Certificate.

1. This Certificate is issued in consideration of the representations and agreements made by the person named herein in his application to become a member and in consideration of the payment made when introduced in prescribed form, also, his agreements to pay all assessments and dues that may be levied during the time he shall remain a member of the Woodmen of the World.

2. If the admission fees dues or Beneficiary Fund assessments levied against the person named in this Certificate shall not be paid to the Clerk of his Camp, as required by the Constitution and Laws of the Order, this Certificate shall be null and void, and continue so until payment is made and the requirements of said Constitution and Laws have been fully complied with.

[fol. 36] 4. If the member holding this Certificate shall be expelled from the Order or be so far intemperate or use opiates to such an extent as permanently impair his health or to produce delirium tremens, or should he die in consequence of a duel, or while engaged in war, or by his own hand (except it be shown that he was at the time insane) or by the hands of the beneficiary or beneficiaries named herein (except by accident) or in consequence of the violation or attempted violation of the laws of the State or of the United States, or of any other province or nation or if any of the statements or declarations in the application for membership and upon the faith of which this Certificate was issued shall be found in any respect untrue, this Certificate shall be null and void and of no effect and all moneys which shall have been paid and all rights and benefits which may have accrued on account of this Certificate, shall be absolutely forfeited without notice or service.

Beneficiary Certificate No. 8955. Amount \$1,000.

Mr. Pleasant Bolin

Woodmen of the World

Benevolent Secret Beneficiary Fraternity

Important

The Member should see that his assessments and dues are all paid on or before the first day of every month.

[fol. 37] Assessments for the month also, admission fees and dues must be paid before this certificate can be delivered.

Receipt of Beneficiary

At —, State of —.

Received this — day of —, A. D. — of the Woodmen of the World — Thousand Dollars in full payment of all benefits due and payable under this Certificate upon the death of — — in consideration of which this Certificate is cancelled and surrendered.

In presence of

..... The beneficiary named herein.

..... Witnesses

Change of Amount or Devisee

I — — to whom this Certificate was issued do hereby cancel and surrender this Certificate and order that a new one shall be issued and that the benefits shall be of the amount of — Thousand Dollars, and shall be made payable to — —, who bears relationship to myself of —.

..... (Seal.)

Signed at —, State of —, this — day of — 189—.

Attest — —, Clerk Camp No. —, Woodmen of the World.

[fol. 38] JAMES D. BOLIN, having been recalled for further examination as a witness on behalf of the plaintiffs, testified further as follows, to-wit:

Redirect examination.

By Mr. Harvey, Counsel for Plaintiffs:

The \$1,000.00, mentioned in this certificate, Exhibit 1, has not been paid, nor has the \$100.00 for the monument been

provided. I gave notice to the company of the death of my father and made demand for the payment of the amount specified in this certificate. I asked for proof of death blanks to fill out also.

Thereupon, a certain letter was marked by the reporter Plaintiffs' Exhibit 2.

Mr. Harvey:

Q. I hand you what has been marked Plaintiffs' Exhibit 2, and ask you if that is the letter that you wrote to the Woodmen of the World for that purpose?

A. Yes, sir, it is.

Q. Did you address that letter to the Camp of the Woodmen of the World at Omaha and put it in the post office prepaid postage on it, and mail it?

A. Yes, sir, I registered it.

Thereupon, a certain letter was marked by the reporter Plaintiffs' Exhibit 3.

Q. Now, I am handing you Exhibit 3, and asking you if that Exhibit is what you got by mail in return in answer to Exhibit 1?

A. Well, I didn't receive this letter; it was written to my father.

Q. Well, maybe I gave you the wrong letter—yes, I did.

[fol. 39] Thereupon, a certain letter was marked by the reporter Plaintiffs' Exhibit 4.

Q. Now, I hand you Plaintiffs' Exhibit 4, and ask you if you know anything about that?

A. Yes, I received this letter in answer to one I had written them asking them for proof of loss blanks, and it was the one they sent me in answer to it.

Q. Did you get any blanks to make proof of death on?

A. No, sir, I did not.

Mr. Harvey, Counsel for Plaintiffs (addressing counsel for defendant): Now, your Answer, as I recall, admits payments up to and including June, 1916, is that right?

Counsel for Defendant: That is correct.

Mr. Harvey: Well, we rest.

At this point, by agreement of Counsel for Plaintiffs and Defendant, also, consent of the Court, the jury was discharged and the cause submitted to the Court, the Court sitting as a jury.

Thereupon, the Defendant, to sustain the issues on its part arising, introduced the following evidence:

Senator Ford: We offer in evidence the deposition of the witness produced and sworn on the 22nd of December, 1933, Mr. John T. Yates.

JOHN T. YATES, of lawful age, being produced, sworn and examined on the part of the defendant, deposeth and saith:

Direct examination.

By Mr. Sturdevant:

My name is John T. Yates. My residence is Omaha, Nebraska. I am Secretary of the Sovereign Camp of the Wood-[fol. 40] men of the World and have been for more than forty-two years. The Sovereign Camp of the Woodmen of the World is a corporation under the laws of Nebraska, and is a fraternal beneficiary society. It has a lodge system, known as Camps, and has a ritual and ritualistic work. It has a representative form of government. It has no capital stock. It is conducted for the benefit of the members of the Society and not for profit. The membership in the Camps elects delegates to head camps. The head camps elect delegates to the Sovereign Camp, which is the supreme law-making body, and is the representative body of the members of the society. To obtain membership in the Woodmen of the World, a person must make application for membership to the Camp. It is voted upon by the Camp, and if they are accepted, they are examined by a physician, known as the Camp Physician, and then the application forwarded to me as Secretary of the Association for consideration. It is submitted to the Medical Director, who has charge of the medical end of the Society, and if approved by him, it is returned and a certificate is issued by me for the amount that the Doctor or the Medical Director approves it for.

Q. Handing you a paper which is marked as Exhibit "A," I will ask that you state what that is, if you know?

A. This is an application for membership in the Society by Pleasant Bolin.

Q. I will ask that you state whether you ever received that application in your office, and if so, when?

A. The application was received in my office about May 30, 1896. The same was submitted at that time to Dr. W. O.

[fol. 41] Rogers, who was the Medical Director, or Sovereign Physician of the Society. He in turn accepted it for \$1,000.00 and numbered 8955 and forwarded to the Clerk of the Camp for delivery, as required by the Constitution.

Q. By what sort of rules and regulations, if any, is the Sovereign Camp of the Woodmen of the World governed, if you know?

A. It has a Constitution, Laws and By-Laws that sets forth the duties of the officers, and in a general way, contains the law, rules and regulations by which the business of the Society is conducted. The Defendant Association had such a Constitution, Laws and By-Laws at the time Certificate No. 8955 was issued to Pleasant Bolin. That Constitution and By-Laws was adopted by the Sovereign Camp held at Omaha, Nebraska March 12th to 19th inclusive, 1895, and became effective July 1, 1895. The pamphlet marked Exhibit "B" is a printed copy of the Constitution and Laws enacted by the Sovereign Camp at its meeting in Omaha, March 12th to 19th, 1895 and effective July 1, 1895. It has been read and compared and found to be a true copy. My signature is found at the bottom of the last page.

Thereupon, Exhibit "B" was received in evidence.

Q. If you know, I will ask that you state whether the Sovereign Camp held sessions in the years 1897, 1899, 1901, 1915, 1917, 1919, and 1931; and, if so, whether at each of said sessions, it amended, enacted and adopted a Constitution, Laws and By-Laws.

A. Yes, they held a session at each of the times designated [fol. 42] and adopted an amended Constitution. Exhibit "C" is a printed copy of the Constitution, Laws and By-Laws of the Sovereign Camp of the Woodmen of the World, to take effect May 1, 1897, and adopted in 1897; Exhibit "D" is the Constitution, Laws and By-Laws of the Sovereign Camp of the Woodmen of the World, printed, read and compared, and is a true copy of the Third Biennial Session of the Sovereign Camp held at Memphis, Tennessee, March, 1899; Exhibit "E" is a printed copy of the Constitution, Laws and By-Laws of the Sovereign Camp of the Woodmen of the World, adopted at Columbus, Ohio, May, 1901; Exhibit "F" is a printed copy of the Constitution, Laws and By-Laws of the Sovereign Camp, adopted at St. Paul, Minnesota, July, 1915 and became effective September 1, 1915;

Exhibit "G" is a printed copy of the Constitution, Laws and By-Laws of the Sovereign Camp, adopted at Atlanta, Georgia, July, 1917 and became effective October 1, 1917; Exhibit "H" is a printed copy of the Constitution, Laws and By-Laws of the Sovereign Camp, adopted at Chicago, Illinois June, 1919, and became effective December 31, 1919; Exhibit "I" is a printed copy of the Constitution, Laws and By-Laws of the Sovereign Camp, adopted at Buffalo, New York, June, 1931 and became effective November 1, 1931.

Thereupon, Exhibits "C", "D", "E", "F", "G", "H" and "I" were received in evidence.

Q. Calling your attention to Section 82 of the Constitution, Laws, and By-Laws of 1895, Exhibit "B," and to Section 68 of the 1897 Constitution, Laws and By-Laws, Exhibit "C," I will ask that you state, if you know, what action, if any, was taken at any time by the Sovereign Camp with reference to said section?

A. Section 68 was declared repealed by a two-thirds vote of the members constituting the Sovereign Camp, at the afternoon session of Thursday, March 23, 1899.

Q. If you know, I will ask that you state what payments, if any, Pleasant Bolin was required to make to the defendant Association on account of beneficiary certificate No. 8955?

A. From June, 1896 to August, 1899 he was required to pay \$1.05 per month; from September, 1899 to August, 1901, \$1.20 per month; from September, 1901 to August, 1915, \$1.30 per month, exclusive of the local camp dues. From September, 1915 to September, 1917, had he remained in the Society, he would have been required to pay \$1.70 per month, and from October, 1917 to December, 1919, \$1.80 per month, which assessments were not paid.

Q. State whether all of the payments which you have mentioned in your answer to the previous question were in addition to local camp dues?

A. They were.

Q. I will ask that you point out the sections, if any, of various Constitutions, Laws and By-Laws of the defendant Association which have been offered in evidence, which make provision with reference to the payments, if any, required to be made by members of the defendant Association?

A. In the Constitution, Laws and By-Laws, designated as Exhibit "B," Section 120 designates.

[fol. 44] Q. Is there any other section in Exhibit "B" making provision with reference to the rates required to be paid by members of the defendant Association, and if so, what sections?

A. Section 67 of the said Constitution and Laws. In the 1899 Laws we find it in Sections 55, 71 and 109. We find it in Sections 55, 71 and 108 of the 1901 laws; in the 1915 laws we find it in Section 56; and in the 1917 laws in Sections 56 and 110.

Q. If you know, state whether Pleasant Bolin paid all of the various assessments rates which you have mentioned, and if not, state wherein he failed to do so.

A. He paid the required assessments to August 1, 1916.

Q. Handing you the card marked Exhibit "K," I will ask that you state what that is, if you know?

A. This is the official card on which we keep record of the payments. It is the only record of the membership of Pleasant Bolin which shows the payments made by him on his certificate.

Q. Calling your attention to the entry "Aug. 1-16" on this card, I will ask that you explain, if you can, what that means?

A. Each entry shows a payment made on that date to the Sovereign Camp. The blanks indicate there were no payments made thereafter.

Q. What does the entry "Aug. 1-16" mean?

A. It means he paid that assessment on that date.

Q. Is that the date of payment, or the date when he failed to pay, so far as indicated by your record?

A. This would indicate that he was suspended.

Q. What date was that?

A. August 1, 1916.

[fol. 45] Q. Does that record indicate to you then that you never received any payment after that date for Pleasant Bolin?

A. Yes, sir, that is what it indicates.

Thereupon, Defendant offers Exhibit "K" in evidence.

Q. What, then, was the last payment which you received from Pleasant Bolin, if he became suspended August 1, 1916?

A. The last paid would be for June, 1916.

Q. On examining the 1919 Constitution, Laws and By-Laws, Exhibit "H," and particularly Section 60 thereof, I

note that reference is made therein to the plan of apportionment and readjustment on file in your office, as stated in Section 60 of said 1919 Constitution, Laws and By-Laws?

A. Yes, we have.

Q. Handing you a paper marked Exhibit "L," I will ask that you state what that is, if you know?

A. That is a printed, compared and true copy of the plan of apportionment and readjustment now on file in my office.

Thereupon Exhibit "L" was received in evidence.

Q. Handing you a pamphlet which is marked as Exhibit "M," I will ask that you state what that is, if you know?

A. That is our Rate Book, explanatory of the Constitution and Laws of the Woodmen of the World as amended and adopted at the Thirteenth Biennial Session of the Sovereign Camp at Chicago, Illinois, July, 1919, effective December 31, 1919.

Thereupon Exhibit "M" was received in evidence.

[fol. 46] Q. I will ask that you point out what Section, if any, of the 1919 Constitution, Laws and By-Laws (Exhibit "H") makes provision with reference to assessment rates required to be paid by members of the defendant Association after December 31, 1919.

A. Section 60 (a), (b), (c), (d) and Section 61 in its entirety, I believe that covers it.

Q. I further note in examining Section 60 of the 1919 Constitution, Laws and By-Laws (Exhibit "H") and particularly Section 60 (a) that reference is made to certain notes required to be paid by members of the defendant Association after December 31, 1919, and that it is further provided therein that the rate so set forth shall be reduced in accordance with the plan of apportionment and readjustment. If you know, I will ask that you state what rates would have had to be paid under Section 60 (a) and the plan of apportionment and readjustment after December 31, 1919 by a member who was seventy years of age at his nearest birthday on December 31, 1919, and forty-seven years of age at the time he became a member of the defendant association.

A. A member forty-seven years of age and at an attained age of seventy, would be required to pay \$93.23 per \$1,000.00 per annum, or a monthly rate of \$8.08.

Q. Will you point out where those rates are to be found?

A. On page 98 of Exhibit "M."

Q. State whether the payments which you have just mentioned were in addition to local Camp dues?

A. There were.

[fol. 47] Q. On examining Section 60 (c) of said 1919 Constitution, Laws and By-Laws, Exhibit "H," I note the provision that members failing to pay the increased rates set forth in Sections 60 (a) and 60 (c) of said Laws after December 31, 1919, shall thereby elect the charging of an interest bearing lien against their certificate and the cancellation of the monument and old age disability benefits previously provided, the amount of said lien being determined by the plan of apportionment and readjustment. Will you state, if you know, the amount of the lien which would attach under Section 60 (c) of the 1919 Constitution, Laws and By-Laws to the certificate of a member who was seventy years of age at his nearest birthday on December 31, 1919, and who failed to pay the increased rates after that date, and who held a certificate for \$1,000.00.

A. \$220.00.

Q. Will you state where the amount of that lien may be found?

A. It may be found on page twelve of Exhibit "M."

Q. If Pleasant Bolin made no monthly payments on his certificate after the month of June, 1916, and if he died on July 18, 1933, what would be the amount of the unpaid installments on said beneficiary certificate at the date of his death?

A. The amount of installments would be from July, 1916, to September 30, 1917, fifteen months at \$1.70, \$25.50; from October 1, 1917 to June 30, 1933, one hundred eighty-nine months at \$1.80, \$340.20.

Mr. Sturdevant: I believe that is all.

[fol. 48]. Cross-examination.

By Mr. Harvey:

I have been Secretary of the Organization for about forty-two years. The application Exhibit "A" was received from Arkoe and upon that application there was issued a certificate for \$1,000.00. That certificate was issued under date of June 3, 1896 and numbered 8955. That is the only certificate that was ever issued to Pleasant Bolin and it was issued by our regular officers and our corporate seal at

tached to it. It was sent to the Camp at Arkoe to Mr. Bolin and he commenced to pay at that time.

Q. And continued to pay whenever they asked him at Arkoe to pay?

A. There were times when he failed to pay, but reinstated at different times, but up to July 1, 1916, he was in good standing.

Q. As I understand you then, Mr. Yates, there was nothing more according to your records due from Pleasant Bolin until the first of August of 1916. Is that right?

A. There was due at that time an installment. That would be for the month of July. He did not pay that then.

Q. Then you did what you call suspend him?

A. Yes, I will call it that. He was suspended by operation of the law, not by my action.

Q. Well, was any action taken to that effect?

A. It was not necessary.

Q. I am not asking whether it was necessary, I was asking if it was taken?

A. The only action would be to make a record of it in the office. There was at that time in operation this action: We would send out notices or reminders to the members that [fol. 49] they were in suspension and that they should pay up. These were printed and sent out through the routine of the office—more in the way of courtesy than any requirement of the Constitution and Laws.

Q. Do I understand that all the record you have in your office as Secretary pertaining to this matter is what is shown by your Exhibit "K"?

A. Yes.

Q. I do not know that I understand these figures on Exhibit "K." Would you be kind enough to tell me what they are for?

A. Well, this man became suspended July 1, 1912. He reinstated September 1, 1912; then he became suspended November 1, 1912.

Q. Then to shorten this matter, I take it these figures show suspension and reinstatement?

A. Yes, they do.

Q. And the last figures then that are shown on the paper would be your suspension of August 1, 1916?

A. Yes.

Q. Was anything paid on this Exhibit "K" after August 1, 1916. If so, what was it?

A. We made a notation that he died July 18, 1933. We put "Due balance of Annual Asst. Inst. No. Susp. If claim is approved collect Inst. No. 6-16." These were just indications for our information. Then there is marked in pencil "Claim Dept. 8-3-33;" "Tabulated;" and "Plate Killed." These were all put on afterwards.

Q. Then, as I get it, Pleasant Bolin was in good standing in the Order up to the first of August, 1916, when you put the last suspension on?

A. The last installment he paid was for June. He had, [fol. 50] however, all of the month of July to pay the July installment, which he failed to pay, and he would have been in good standing up to the last day of that month had he died.

Q. He would have been in good standing had he died up to the last day of what month? Up to the first day of August?

A. Yes, up to the first day of August. He had all of the month of July to pay the July installment.

Q. He paid nothing after that time?

A. He did not.

Q. This body had headquarters here at Omaha, Nebraska, and has had all the time?

A. Yes.

Q. After the death of Mr. Pleasant Bolin you learned that from some of his family and made the notation on Exhibit "K"?

A. Yes.

Q. Were you asked to send regular forms for proof of death?

A. I do not recall, but presume the file will show it. Our files show that the first information we got of the death was the filing of the suit on September 19, 1933.

Q. I am handing you what is marked Exhibit "N" and am asking you, if you know, to state whose signature that is?

A. It looks to me like it is a stamped signature. I think it is one of the clerks in the office of the Claim Department.

Q. Do you know whether that is the way they send out letters of that sort?

A. I am not familiar with the workings of that department.

Q. Will you tell me who is?

A. Mr. Sturdevant would be able to tell you.

Q. Do you know whether or not you received a letter from J. D. Bolin, Bolckow, Missouri, in response to which this Exhibit "N" was written?

[fol. 51] A. I have no letter from anybody with reference to that.

Q. I call your attention to what is marked Exhibit "Q," and ask if that is not a letter that your Association here at Omaha received from J. D. Bolin, Bolckow, Mo.?

A. After answering the former question, I looked over my files and found this letter was received by me, and sent to the Claim Department.

Exhibit "O" is then offered in evidence.

Q. Calling your attention to Exhibit "N," I will ask you if that is not the letter that was written by the Sovereign Camp in answer to Exhibit "O" just shown you a moment ago?

A. I would say that this is a letter from the Claim Department—it has the aspect of it, at least, and if it is, then, of course, it is from the Sovereign Camp.

Q. I want to ask you if this man McCarthy is authorized by the Woodmen of the World here to attend to that business?

A. Yes, he is.

Q. So that when a request was made it was declined because your position was that Pleasant Bolin had been suspended, and therefore was not then a member?

A. Yes.

Plaintiff offers Exhibit "N" in evidence.

Q. I hand you what is marked Exhibit "P" and ask if you know anything about that?

A. This is a letter from my office in answer to another letter, which requested a change of beneficiary in Mr. Pleasant Bolin's certificate. It shows that we refused to change the beneficiary for the reason that the man was in suspension on our records August 1, 1916.

[fol. 52] Thereupon Exhibit "P" was offered in evidence.

Q. Did you have at the time Pleasant Bolin was admitted to Membership more than the one form of certificate which you issued to members?

A. I do not think so.

Q. Then as I get it, the certificate of membership as issued to Pleasant Bolin is like the one you issued to all of the members at that time?

A. Yes.

Mr. Harvey: I believe that is all.

Redirect examination:

Q. If you know, Mr. Yates, will you state whether any beneficiary certificates of the same form as that issued to Pleasant Bolin were issued after September 1, 1899?

A. They were not.

Q. With reference to the title of your office, has it always been Secretary, and if not, when was it changed?

A. It was originally "Sovereign Clerk." It was changed to "Secretary" several years ago.

Mr. Sturdevant: I believe that is all.

DEFENDANT'S EXHIBIT "A"

Application for Membership and Participation in the Beneficiary Fund of the Woodmen of the World Sovereign

Jurisdiction

To the Members of — Camp No. —, of Arkoe, State of Missouri, Woodmen of the World:

I hereby make application for Membership in your Order and participation in its Beneficiary Fund at death [fol. 53] to the amount of \$1,000, or such sum as the Sovereign Physician may approve before my Certificate is issued, and Monument. The Entrance Fee, Certificate Fee and Medical Examination Fee, amounting to \$—.00, accompanies this application.

1. I was born at Lawrance Co., State of Ohio, the 9th day of July, 1849. My age at my nearest birthday is 47 years.

2. I desire the beneficiary to be paid at my death to Sarah M. Bolin relationship wife and in the event said beneficiary should not survive me, same shall be paid to my nearest surviving relative.

Questions to be Answered by the Applicant

1. What is your name? Pleasant Bolin.

2. Residence? Arkoe, Missouri.

3. How long a resident where application is made for membership? 25 years.

4. What is your occupation? Farmer.

(State duties fully. A merchant, clerk or laborer will not answer. Give kind of business or labor.)

5. Are you engaged in any of the following prohibited occupations: Brakeman, engineer, fireman or conductor of railway freight trains, railway switchman, miner, employed in ammunition factory, wholesale or manufacturing of intoxicating liquors, saloon keeper or bartender, sailor on lakes or sea, plow grinder, brass worker, glass blower, electric light engineer or lineman? No.

[fol. 54] 6. Family History.

(Ascertain the specific cause of death, especially when there may be a suspicion of consumption. General terms as "exposure," "general debility," "child-birth," "change of life," "effects of cold," "fever," etc., without explanation, are not satisfactory.)

	Age if living	Condition of Health	Age at Death	Cause of Death	How Long Sick	Previous Health
Father	69	Good				
Mother	65	"				
How Many	43, 35					
Brothers?	33, 24					
	4					
How Many						
Sisters?						
Father's Father			79	Old Age		
Father's Mother			40	Don't know		
Mother's Father			90	Old Age		
Mother's Mother			80	" "		

7. Have you ever had any severe illness or injury, or undergone any surgical operation? If so, state when and give particulars and name of attending physician? No.

8. Have you ever been afflicted with any of the following complaints? (Give separate answer to each question.)

1. Asthma. No.
2. Apoplexy. No.
3. Bronchitis. No.

(Renal

4. Colic (Bilious. No.

(Hepatic

[fol. 55] 5. Cancer or Tumor. No.

6. Chronic Catarrh. No.
7. Chronic Diarrhoea or Dysentery. No.
8. Delirium Tremens. No.
9. Discharge from the ear. No.
10. Difficulty of Urinating. No.
11. Excessive or Scanty Secretion of Urine. No.
12. Eruptions of the Skin. No.
13. Fistula. No.
14. Fits or Convulsions. No.
15. Gout. No.
16. Gravel. No.
17. Insanity. No.
18. Jaundice. No.
19. Dizziness. No.
20. Dropsy. No.
21. Dyspepsia. No.
22. Lead Poison. No.
23. Neuralgia. No.
24. Open sores or Ulcers. No.
25. Persistent Headache. No.
26. Palpitation of the Heart. No.
27. Paralysis. No.
28. Piles. No.
29. Pleurisy. No.
30. Pneumonia. No.
31. Spitting or Passing Blood. No.
32. Sunstroke. No.
33. Swelling of Feet, Hands or Eyelids. No.

[fol. 56] 34. Syphilis or any Diseases of the Genital or Urinary Organs. No.

35. Varicose Veins. No.

If so, state full particulars, time, duration, number of attacks, and whether you have fully recovered?

9. Have you ever had Inflammatory Rheumatism? No.

If so, give date, duration, and if you have fully recovered.

10. Have you been successfully Vaccinated? Yes. If "No," do you waive all rights to benefits should your death result from Small Pox?

11. Are you ruptured? No. (Single or Double)? Is it reducible?

If ruptured, do you agree to wear a well fitted truss?

12. To what extent do you drink wine, spirits or malt liquors? None. Have you been addicted to the use of liquors or narcotics? No. If so, to what extent? Have you taken the liquor cure? No.

13. Have you ever been rejected for Life Insurance? If so, state when, and name the Company or Order? No.

14. Is your Life insured? If so, state in what amount? No.

15. Have you ever dropped out or been expelled from a Camp of the Woodmen of the World? If so, the Certificate of Membership must accompany this application. Or have [fol. 57] you been refused the full amount of benefits applied for in any organization? No.

John S. McClaskey, S. S. C.

Recommended by Sovereigns or Deputy.

Report of Committee

We recommend that the applicant be — accepted.

— — — — —, Investigating Committee.

I certify that each and all of the foregoing answers or statements are true and correct, and shall form the basis for the issuance of a Membership Certificate and shall be deemed and taken as a part of said Certificate, and together shall be construed as one complete contract, whether a copy of the application is attached to the Certificate or not, said copy being hereby waived. I waive for myself and my beneficiaries all claims of participation in the beneficiary fund until this application shall be approved by the Sovereign Physician, and until I shall have paid the prescribed Entrance Fee, Certificate Fee, Medical Examination Fee, one assessment and dues for the present term; and until said payments are made, the Certificate issued by virtue of

this application shall not be in force or binding upon the Order..

Pleasant Bolin Applicant.
P. O. Address Arkoe, Mo.
Dated May 26, 1896.

The Camp Clerk or Deputy shall fill out the following before applicant is examined by the Physician. After [fol. 58] an Applicant has been elected by the Camp, he shall present himself to the Camp Physician for examination.

Clerk's or Deputy's Certificate

I certify that the applicant herein named was elected to membership the — day of — 189—.

Camp Physician's Report of Examination

1. Name and residence of person examined. 1. Pleasant Bolin.
2. Weight of Applicant. 2. 150.
3. Height. 3. 5 ft. 9 in.
4. Figure. 4. Erect.
5. Color of Hair. 5. Slight gray.
6. Color of Eyes. 6. Brown.
7. General Appearance. 7. Good.
8. Any deformity. 8. No.
9. Which parent does he resemble? 9. Father.

Remarks. —.

10. State the rate and other qualities of the pulse? 10. Sitting 74 Standing 79.

11. Does it intermit or become irregular? 11. No.
12. Number of respirations per minute. 12. 18.
13. Circumference of chest at expiration. 13. 32 inches.
14. At inspiration. 14. 36½ inches.
15. Circumference of abdomen. 15. 32 inches.
16. Are there any indications of disease of the respiratory organs? 16. No.
- [fol. 59] 17. Are there any indications of disease of the heart or blood vessels? 17. No.
18. Is the person subject to cough, expectoration, difficulty of breathing, or palpitation of the heart? 18. No.

19. Is the respiratory murmur clear and distinct over both lungs? 19. Yes.

20. Is the character of the heart's action uniform, free and steady? 20. Yes.

21. Are its sounds and rhythm regular and normal? 21. Yes.

22. Are the functions of the brain, the muscular and nervous system in a healthy state? 22. Yes.

23. Are the functions of the abdominal and urinary organs in a healthy condition? a. Have you examined his urine? b. 23. a. Yes. Is it free from albumin? Yes. b. Yes. (Is it free from sugar? Yes (Specific Gravity 1024).

24. Do you believe the person to be sober and steady in his habits of life? 24. Yes.

25. Does he use opium in any form? 25. No.

26. Has the person any predisposition, either hereditary or acquired, to any local constitutional disease? 26. No.

27. Have the person's parents, brothers or sisters been afflicted with pulmonary, cardiac or other diseases hereditary in their nature? 27. No.

28. Has the person ever had any severe injury or illness? 28. No. If so, had it any effect on his constitution? [fol. 60] 29. Do you find any unfavorable features in the applicant's physique, family or personal history, residence, occupation, habits or circumstances of life affecting risk? 29. No.

30. Do you consider the applicant's life as a safe risk? 30. Yes.

31. Do you recommend that he be accepted as a member of this Camp? 31. Yes.

32. Are you personally acquainted with the applicant? 32. No.

33. Have you ever prescribed for him? If so, when and for what cause? 33. No.

34. Is he receiving a pension from the Government? If so, for what cause? 34. No.

I certify that the answers to the above questions are in my own handwriting, and that I have made a careful personal examination of Mr. Pleasant Bolin, knowing him to be the identical person and that this is a true statement of his condition.

G. Meyer, M. D., Camp Physician.

Examined at Arkoe, Mo., date May 27th, 1896.

P. S. Examining Physicians are requested to send private reports to W. O. Rodgers, M. D., Sovereign Physician, Omaha, Nebraska, should there be honorable reasons for so doing, and same will be treated as sacredly confidential. The Sovereign Camp wants no questionable or doubtful risks.

(On the reverse side of said policy appears the following: The Certificate Fee must be alw**—awarded with this Application.

[fol. 61] Woodmen of the World

Certificate No. 8955.

Issued Jun. 8, 1896.

Application of Pleasant Bolin.

Camp No. 166.

State of Missouri.

Age 47.

Occupation: Farmer.

Amount \$1,000 Approved.

Assessment Rate, \$.90.

Accepted May 30, 1896.

W. O. Rodgers, Sovereign Physician.

DEFENDANT'S EXHIBIT "B"

Applications

Section 56. Applications must be made on forms prescribed by the Sovereign Camp, and the applicant recommended by two members, or an organizing deputy. A fee shall accompany the application of such amount as the Camp may order, but not less than Ten (\$10.00) Dollars, except by special dispensation of the Sovereign Commander or a Head Consul, countersigned by a Provisional Head Consul, when within the jurisdiction of one.

Section 57. Upon payment of the entrance fee a deputy Sovereign Commander shall be authorized to confer, the Morning, Noon and Night degrees, without charge, upon applicants, at the time of obligation; but after Camps have [fol. 62] been instituted an extra charge must be made of not less than one dollar each for the conferring of said degrees.

Section 58. An application for membership shall be referred to a committee of three members upon whose report a ballot shall be spread, three negative votes rejecting. If favorable, he shall be examined by the Camp Physician, paying the fee therefor. Should the examination be favorable, the clerk shall forward the application to the Sovereign Clerk, Head Clerk or Provisional Head Consul, as the case may be, together with the prescribed certificate fee. If it shall be approved by the Sovereign or Head Physician, a certificate shall be issued in such amount as he may determine, duly attested by the proper officers and forwarded to the Provisional Head Consul, if under such a jurisdiction, if not to the Clerk of the Camp, who shall notify the applicant, after which he can be introduced at a regular or special meeting.

Section 59. If an applicant shall not be elected to membership, the entrance fee less the Physician's fee shall be returned and he cannot again make application to become a member within six months, and if rejected a third time, he shall be forever barred from becoming a member. If rejected by the Sovereign Physician or Head Physician, one year must elapse before he can again make application, and if rejected by either of them a second time, he shall be forever barred from becoming a member.

[fol. 63] Section 60. A certificate fee of one dollar shall be sent to the Sovereign Clerk or Head Clerk, with every application, excepting where they are under the jurisdiction of a Provisional Head Consul, when the application shall be sent to him accompanied by two dollars.

Section 61. If an applicant fails to present himself for introduction for more than three meetings after being notified by the Clerk of the Camp, he shall forfeit his entrance fee, unless excused by a two-thirds vote of those present at the meeting, and his certificate shall be returned to the Sovereign Clerk.

Beneficiary Certificates

Section 62. Until such time as any part of the Order shall become a Separate Beneficiary Jurisdiction the Sovereign Camp shall issue all Beneficiary Certificates, which shall be countersigned by a Provisional Head Consul, when issued to a member within the jurisdiction of his contract, and shall not be issued for less than Five Hundred (\$500) Dollars nor more than Three Thousand (\$3,000) Dollars.

Section 63. An applicant shall designate the amount he desires named in his Beneficiary Certificate, which sum shall be fixed at Five Hundred (\$500) Dollars, One Thousand (\$1,000) Dollars, Fifteen Hundred (\$1500) Dollars, [fol. 64] Two Thousand (\$2,000) Dollars, Twenty-five Hundred (\$2500) Dollars or Three Thousand (\$3,000) Dollars.

Section 64. In addition to the beneficiary certificate there shall be paid from the beneficiary fund, upon the death of a member and upon request of his Camp, the sum of One Hundred (\$100) Dollars, with which to place or cause to be placed a tombstone or monument at his grave, upon which shall be placed such emblem of the Order as shall be authorized by the Sovereign Camp.

Section 65. Every monument erected by this Order shall have carved thereon the words "Erected by the Woodmen of the World": provided the same is erected wholly at the expense of the Order.

Section 66. Before a certificate shall be delivered to an applicant he shall deposit with the Clerk an advance beneficiary assessment and one monthly payment of Sovereign Camp or Head Camp General Fund dues, also Camp dues to the end of the current term.

Section 67. In order to pay death losses each member shall, as often as required, contribute an assessment equal to the rate named in his certificate, to be computed from his nearest birthday. The following shall be the rates of assessment on the several amounts at the ages respectively:

Ages	Assessment Rates					
	Amount of Certificate and \$100 for Monument					
	\$500	\$1000	\$1500	\$2000	\$2500	\$3000
16 to 21.....	.20	.35	.50	.70	.85	1.05
22 to 25.....	.20	.35	.55	.75	.90	1.10
26 to 29.....	.25	.40	.65	.80	1.05	1.20
30 to 33.....	.25	.45	.70	.90	1.15	1.40
34 to 37.....	.30	.50	.80	1.00	1.30	1.50
38 to 40.....	.35	.60	.95	1.15	1.50	1.75
41 to 43.....	.35	.65	1.00	1.30	1.65	1.95
44 to 45.....	.40	.75	1.15	1.45		
46.....	.45	.80	1.20	1.60		
47.....	.50	.90	1.35	1.80		
48.....	.55	1.00	1.50	2.00		
49.....	.60	1.10	1.65	2.20		
50.....	.65	1.15	1.75	2.35		
51.....	.70	1.30				
52.....	.75	1.50				

Section 68. The liability of a member to contribute to the payment of death losses shall commence with the date his certificate was issued by the Sovereign Clerk or Head Clerk.

Section 69. The liability of the Sovereign Camp or Head Camp, for the payment of benefits upon the death of a member, shall not begin until after his application shall have been accepted by the Sovereign Physician or Head Physician, his certificate issued and he shall have—

First. Paid all the entrance fees.

Second. Paid his advance assessment.

Third. Paid the Sovereign Camp or Head Camp General Fund dues for the month and the Camp dues for the current term.

Fourth. Paid the Physician's fees for medical examination.

[fol. 66] Fifth. Having been obligated or introduced by a Camp or authorized member in due form.

Sixth. Had delivered to him his beneficiary certificate.

The foregoing is hereby made a part of the consideration for and are conditions precedent to the payment of benefits in case of death.

Section 70. The non-compliance with or non-performance of any of the requirements in the preceding Section, upon the part of the applicant, shall be an absolute bar to any claim upon the beneficiary fund of the Order, under or by virtue of any beneficiary certificate that may have been issued in his name or by reason of any preliminary steps he may have taken to entitle him to the same; and no Deputy, Officer or any member of the Sovereign Camp or Head Camp or Camps has authority to change, alter, modify or waive the foregoing requirements or the consequences thereof, in any manner.

Section 71. The following conditions shall be made a part of every beneficiary certificate and shall be binding upon both member and Order:

First. This certificate is issued in consideration of the representations and agreements made by the person named herein, in his application to become a member and in con-

sideration of the payment made when adopted in prescribed form, also his agreements to pay all assessments and dues that may be levied during the time he shall remain a member of the Woodmen of the World.

[fol. 67] Second. In case of his death, while a member in good standing, his beneficiary shall receive such sum as may be collected from an assessment upon all members, according to the certificate held by each, but shall not exceed the amount stated on the face of this certificate.

Third. If the admission fees, dues or beneficiary fund assessments levied against the person named in this certificate shall not be paid to the Clerk of his Camp, as required by the Constitution and Laws of the Order, this certificate shall be null and void, and continue so until payment is made in accordance therewith.

Fourth. If the member holding this certificate shall be expelled from the Order or become so far intemperate, or use opiates to such an extent as to permanently impair his health, or to produce delirium tremens or should die in consequence of a duel, or while engaged in war, or by his own hand, (except it be shown that he was at the time insane), or by the hands of the beneficiary or beneficiaries named herein (except by accident), or in consequence of the violation or attempted violation of the laws of the State or of the United States, or of any other Province or Nation, or if any of the statements or declarations in the application for membership and upon the faith of which this certificate was issued, shall be found in any respect untrue, this certificate shall be null and void and of no effect, and all moneys which shall have been paid and all rights and benefits which may have accrued on account of this certificate shall be absolutely forfeited, without notice or service.

[fol. 68] Section 72. No certificate shall be granted to applicants who have passed their forty-third birthday, for an amount exceeding two thousand (\$2,000) Dollars, nor to persons who have passed their fifty-first birthday for an amount exceeding one thousand (\$1,000) dollars.

Section 73. Should any member who is under fifty-two years of age desire to increase his certificate to an amount to which he was entitled at the time such application was made, he shall be examined and balloted for by his Camp,

and if two-thirds of the votes present are favorable, he shall surrender his certificate to the Clerk with a fee of one dollar, who shall forward the application, examination, certificate and fee to the Sovereign Clerk, or to the Head Clerk if under a Head Camp, who shall submit the examination to the Sovereign Physician or Head Physician, as the case may be, and if approved by him, a new certificate shall be issued for the increased amount, the rate upon the additional amount being based upon the age at the time of making such application. Should the Sovereign Physician or Head Physician reject the application, a certificate shall be issued for the original amount. In either case, the fee shall be retained by the Sovereign Clerk or Head Clerk.

Section 74. Should a member wish to reduce the amount of his certificate he can do so by the payment of a fee of one dollar and the surrender of his certificate to the clerk of his camp, who will forward the same to the Sovereign Clerk or Head Clerk, with the fee, and a new certificate shall be [fol. 69] issued for the reduced amount and the member shall thereafter pay upon the new amount at the rate established for his age on his original certificate.

Section 75. Should a member desire to change his devisee he can do so upon the payment of a fee of one dollar and the surrender of his certificate to the Clerk of his Camp, with the desired change noted thereon. The certificate and fee shall be forwarded to the Sovereign Clerk, or Head Clerk, who will issue and return a new certificate as requested.

Section 76. No member can hold more than one beneficiary certificate in this Order at the same time.

Section 77. After a certificate shall have been issued to a member if it becomes known that he has made false representations in his application regarding his habits, health or family history, or if he shall become addicted to the excessive use of intoxicating liquors or opiates, the matter shall, upon the request of two members of the Camp, be referred to a committee of three for investigation, who shall give the member ample opportunity to be heard. After the committee have reported all the facts in the case to the Camp, if two-thirds of the members present shall vote in favor thereof, he shall be expelled and his certificate cancelled, and the Clerk shall thereafter refuse to receive any further payments from him, and shall report the action of the Camp

to the Sovereign Clerk or Head Clerk, who shall make a record thereof.

[fol. 70] Section 78. Change of occupation by any member to a prohibited one shall not invalidate his certificate, except as provided in Sec. 136, but his rate of assessment shall be increased thereafter by adding twenty cents to each assessment upon each one thousand dollars or less named in his certificate while the member is so engaged.

Section 79. Change of place of residence to or traveling in foreign countries shall not invalidate a certificate, but the rate of assessment shall be increased by adding twenty cents to each assessment upon each one thousand dollars or less named in the certificate, during the time the member shall be absent from the continent of North America.

Section 80. The non-payment of the additional twenty cents in either case, referred to in Sections 78 and 79, shall work a suspension of the member the same as if the original amount were not paid and upon the same conditions; and during such suspension, his certificate shall be void and no benefits shall be payable until he shall reinstate himself in the same manner as if the original assessment was unpaid and he was suspended therefor.

Section 81. Beneficiary certificates shall be incontestable after one year from date thereof, on the grounds of irregularities, errors, or omissions in the application, examination or introduction; provided, the member to whom same is issued, shall have complied with all its requirements.

[fol. 71] Life Membership Certificates

Section 82. Life Membership Certificates shall be issued by the Sovereign Camp to all members of the Woodmen of the World, under the following conditions:

When the certificate of a member who has entered the Order between the ages of 16 and 33 has been in force and binding for 30 years, or of members entering between 34 and 42 years of age when the certificate has attained the age of 25 years, and all members entering the Order over 43 years of age when the certificate has attained the age of 20 years; and that after the said Life Membership Certificate has been issued the Life Member shall not be liable for Camp dues, assessments or General Fund dues. That the proper officers of the Sovereign Camp shall issue quarterly,

assessment calls upon all members of the Woodmen of the World, regardless of jurisdiction or nation, for a sufficient amount to pay all death claims accruing during the previous three months; for said Life Members who have died during said time, under this provision and that any Life Member visiting a Camp shall be greeted with the honors of the Order and shall be seated at the right of the Consul Commander, and shall also be entitled to wear a Life Membership badge, to be designed and prescribed by the Sovereign Camp.

Assessments

Ordered and Collected

Section 119. On or about the 20th day of each month the [fol. 72] Sovereign Commander and Chairman of the Sovereign Finance Committee shall determine the number of assessments, if any, necessary to provide for the payment of deaths which may be registered for payment and shall so notify the Sovereign Clerk. In Head Camp jurisdictions this shall be determined in such manner as the laws of the Head Camp may provide.

Section 120. Every member of this Order, unless otherwise notified by the Clerk of his Camp, in the manner herein provided, shall pay to the said Clerk, every month, one assessment in the Beneficiary Fund together with one monthly payment of the Sovereign Camp or Head Camp General Fund dues and Camp dues as levied, also any additional assessments for Beneficiary Fund or special General Fund dues, which may have been ordered by the Sovereign Camp or Head Camp, as the case may be; and if he fails to pay either on or before the first day of the month following he shall stand suspended and during such suspension his Beneficiary Certificate shall be void.

Section 121. Whenever more than one assessment is ordered to be paid into the Beneficiary Fund in any one month, the Sovereign Clerk, or Head Clerk, shall so notify the Clerk of every Camp within their respective jurisdictions, on or before the first day of the month for which said assessments are called, and said Clerk notify every member in his camp, in the manner provided in Section 122, on or before the third day of the same month; should any member fail to pay the same on or before the first day of the month following, he shall stand suspended and his Certificate shall be void during such suspension.

[fol. 73] Section 122. When more than one Beneficiary Assessment is ordered in any one month, the Clerk shall notify each member of his Camp of such additional assessment or assessments, or that no assessment has been ordered, as the case may be, by sending a notice by mail to his last known address, or by leaving it at his usual place of residence or business, on or before the third day of said month; but the failure of a Clerk to do so shall not relieve a member from the payment of assessments or dues, according to the call or requirement of the Sovereign Camp, or Head Camp and he shall stand suspended for non-payment of same as if he had received actual notice.

DEFENDANT'S EXHIBIT "C"

Section 43. Persons engaged in the following classes of business or employment, to-wit: Marine divers, members of paid fire departments, railway conductors, engineers, firemen, baggagemen, brakemen, switchmen, hostlers and other similar railway and steamship employees, excepting agents, office men and those engaged in employment not more hazardous, miners, deputy United States marshals, sailors on lakes and seas, employees in electrical works and on electric lines, and soldiers in the regular army, may be admitted to membership, if accepted by the Sovereign Physician, but their certificates shall not exceed Two Thousand (\$2,000) Dollars each, and their rate of assessment to be computed from their nearest birthday, shall be as follows:

[fol. 74] Amount of Certificate and \$100 for Monument.

Age	\$500	\$1000.	\$1500	\$2000
18 to 25.....	.25	.50	.75	1.00
26 to 33.....	.30	.60	.90	1.20
34 to 37.....	.35	.70	1.05	1.40
38 to 41.....	.40	.80	1.20	1.60
42 to 45.....	.50	1.00	1.50	2.00
46.....	.60	1.20	1.80	2.40
47.....	.70	1.40	2.10	2.80
48.....	.80	1.60	2.40	3.20
49.....	.95	1.90		
50.....	1.10	2.20		
51.....	1.30	2.60		
52.....	1.55	3.10		

Section 54. In order to pay death losses each member shall, as often as required, contribute an assessment equal to the rate named in his certificate, to be computed from his nearest birthday. The following shall be the rates of assessment on the several amounts at the ages respectively, except as otherwise provided in Section 43 of this Constitution and Laws:

ASSESSMENT RATES

Amount of Certificate and \$100 for Monument.

Ages	\$500	\$1000	\$1500	\$2000	\$2500	\$3000
18 to 21.....	.20	.35	.50	.70	.85	1.05
22 to 25.....	.20	.35	.55	.75	.90	1.10
26 to 29.....	.25	.40	.65	.80	1.05	1.20
30 to 33.....	.25	.45	.70	.90	1.15	1.40
34 to 37.....	.30	.50	.80	1.00	1.30	1.50
38 to 40.....	.35	.60	.95	1.15	1.50	1.75
41 to 42.....	.35	.65	1.00	1.30	1.65	1.95
43 to 45.....	.40	.75	1.15	1.45		
46.....	.45	.80	1.20	1.60		
47.....	.50	.90	1.35	1.80		
48.....	.55	1.00	1.50	2.00		
49.....	.70	1.40				
50.....	.90	1.80				
51.....	1.05	2.10				
52.....	1.25	2.50				

[fol. 75] Section 68. Life Membership Certificates shall be issued by Sovereign Camp to all members of the Woodmen of the World, under the following conditions:

When the certificate of a member who has entered the Order between the ages of 18 and 33 has been in force and binding for 30 years, or of members entering between 33 and 42 years of age when the certificate has attained the age of 25 years, and all members entering the Order over 42 years; and after the said Life Membership Certificate has been issued the Life Member shall not be liable for Camp dues, assessments or General Fund dues. That the proper Officers of the Sovereign Camp shall issue quarterly assessment calls upon all members of the Woodmen of the World, for a sufficient amount to pay all death claims accruing during the previous three months, for said Life Member who has died during said time, under this provision, and that any Life Member visiting a Camp shall be greeted with the

honors of the Order and shall be seated at the right of the Consul Commander, and shall also be entitled to wear a Life Membership badge to be designed and prescribed by the Sovereign Camp.

DEFENDANT'S EXHIBIT "D"

Section 44. Persons engaged in the following occupations, to-wit: Professional horseshoers, marine divers, sandstone cutters, members of paid fire departments, conductors [fol. 76] and brakemen on railway freight trains, railway baggagemen, expressmen, switchmen, hostlers and other similar railway and steamship employees, excepting agents, office men and those engaged in employment not more hazardous; miners (except coal miners), United States marshals, sailors on lakes and seas, electric linemen, employees in electrical works and enlisted men in the army and navy during war, may be admitted to membership if accepted by a Sovereign Physician, but their certificates shall not exceed \$2,000 each, and their rate of assessment shall be 30 cents per thousand in addition to the regular rate while so engaged in such hazardous occupation.

Any member engaging in a prohibited occupation shall pay 50 cents per thousand in addition to the regular assessment while so engaged in such prohibited occupation.

This section shall be effective as to all members entering prohibited or hazardous occupation on and after September 1st, 1899.

The present rates as to hazardous and prohibited occupation shall continue in force until September 1st, 1899.

Section 55. In order to pay death losses, disability benefits and monument obligations, each member shall, as often as required, contribute an assessment equal to the rate named in his certificate, computed from his nearest birthday at time of joining the Order.

The following shall be the rate of assessment on the several amounts as to members entering the Order on and after September 1st, 1899, at the ages respectively; except as otherwise provided in Section 44 of this Constitution and Laws.

Assessment Rates

Amount of Certificates and \$100 for Monument

Age	\$500	\$1000	\$1500	\$2000	\$2500	\$3000
18 to 25.....	.25	.50	.75	1.05	1.30	1.55
26 to 29.....	.25	.55	.80	1.15	1.45	1.65
30 to 33.....	.30	.60	.90	1.20	1.50	1.80
34 to 37.....	.35	.70	1.05	1.40	1.75	2.10
38 to 40.....	.40	.75	1.15	1.50	1.90	2.25
41 to 42.....	.40	.80	1.20	1.60	2.00	2.40
43 to 45.....	.45	.90	1.35	1.80		
46.....	.45	.95	1.45	1.90		
47.....	.50	1.00	1.50	2.00		
48.....	.55	1.10	1.65	2.20		
49.....	.70	1.40				
50.....	.90	1.80				
51.....	1.05	2.10				
52.....	1.25	2.50				

The table of rates in force July 1st, 1899, shall continue in force as to all members entering the Order before Sept. 1st, 1899.

Section 71.

Emergency Fund

For the purpose of creating an emergency fund every person who now is and every person who may hereafter become a beneficiary member of the Order, shall after September 1st, 1899, pay monthly on or before the 1st day of the next succeeding month, to the Clerk of his Camp, emergency fund dues in the amount shown by the following table, according to his age, at the date of his certificate and the amount thereof, to-wit:

[fol. 78]

Age	\$500	\$1000	\$1500	\$2000	\$2500	\$3000
18 to 25.....	.05	.05	.10	.10	.15	.15
26 to 29.....	.05	.05	.10	.10	.15	.15
30 to 33.....	.05	.05	.10	.10	.15	.15
34 to 37.....	.05	.05	.10	.10	.15	.15
38 to 40.....	.10	.10	.20	.20	.30	.30
41 to 42.....	.10	.10	.20	.20	.30	.30
43 to 45.....	.10	.10	.20	.20		
46.....	.15	.15	.30	.30		
47.....	.15	.15	.30	.30		
48.....	.20	.20	.40	.40		
49.....	.20	.20				
50.....	.25	.25				
51.....	.25	.25				
52.....	.25	.25				

The emergency rate on members who were over 52 years old at time of joining shall be 25 cents per one thousand dollars, or less, with an amount added, equal to 5 cents per one thousand dollars, or less, for each year of their age, in excess of 52 years at date of joining.

Said funds so paid shall be remitted by the Clerk of the Camp to the Sovereign Clerk, as provided in Section 112, and it shall be placed in and credited to a separate fund designated "The Emergency Fund."

DEFENDANT'S EXHIBIT "E"

Section 55. In order to pay death losses, disability benefits and monument obligations, on and after the first of September, 1901, every member who entered the Order prior to that date, shall, as often as required, pay assessments based upon their ages, respectively, when becoming members of this Order, except as otherwise provided in Section 44 of this Constitution and Laws, as specified in the following table of rates;

[fol. 79]

Amount of Certificate and \$100 for Monument

Age	\$500	\$1000	\$1500	\$2000	\$2500	\$3000
18 to 25.....	.25	.50	.75	1.05	1.30	1.55
26 to 29.....	.25	.55	.80	1.15	1.45	1.65
30 to 33.....	.30	.60	.90	1.20	1.50	1.80
34 to 37.....	.35	.70	1.05	1.40	1.75	2.10
38 to 40.....	.40	.75	1.15	1.50	1.90	2.25
41 to 42.....	.40	.80	1.20	1.60	2.00	2.40
43 to 45.....	.45	.90	1.35	1.80		
46.....	.45	.95	1.45	1.90		
47.....	.50	1.00	1.50	2.00		
48.....	.55	1.10	1.65	2.20		
49.....	.70	1.40				
50.....	.90	1.80				
51.....	1.05	2.10				
52.....	1.25	2.50				

Every applicant admitted to membership on and after the first of September, 1901, shall each month contribute such assessments as may be levied for his age at his nearest birthday at entry, according to the following table of rates:

Age	\$500	\$1000	\$1500	\$2000	\$2500	\$3000
18 to 25.....	.30	.60	.90	1.20	1.50	1.80
26 to 29.....	.35	.70	1.05	1.40	1.75	2.10
30 to 33.....	.40	.80	1.20	1.60	2.00	2.40
34 to 37.....	.45	.90	1.35	1.80	2.25	2.70
38 to 40.....	.50	1.00	1.50	2.00	2.50	3.00
41 to 42.....	.55	1.10	1.65	2.20		
43 to 45.....	.60	1.20	1.80	2.40		
46.....	.65	1.30	1.95	2.60		
47.....	.70	1.40	2.10	2.80		
48.....	.75	1.50	2.25			
49.....	.80	1.60				
50.....	.90	1.80				
51.....	1.05	2.10				
52.....	1.25	2.50				

Emergency Fund

Section 71. For the purpose of creating an Emergency Fund, every person who now is and every person who may [fol. 80] hereafter become a beneficiary member of the Order, shall after September 1st, 1899, pay monthly, on or before the first day of the next succeeding month, to the Clerk of his Camp, Emergency Fund dues in the amount shown by the following table, according to his age at the date of his certificate and the amount thereof, to-wit:

Age	\$500	\$1000	\$1500	\$2000	\$2500	\$3000
18 to 25.....	.05	.05	.10	.10	.15	.15
26 to 29.....	.05	.05	.10	.10	.15	.15
30 to 33.....	.05	.05	.10	.10	.15	.15
34 to 37.....	.05	.05	.10	.10	.15	.15
38 to 40.....	.10	.10	.20	.20	.30	.30
41 to 42.....	.10	.10	.20	.20	.30	.30
43 to 45.....	.10	.10	.20	.20		
46.....	.15	.15	.30	.30		
47.....	.15	.15	.30	.30		
48.....	.20	.20	.40	.40		
49.....	.20	.20				
50.....	.25	.25				
51.....	.25	.25				
52.....	.25	.25				

The emergency rate on members, who were over fifty-two years old at time of joining, shall be twenty-five cents per one thousand dollars, or less, with an amount added, equal to five cents per one thousand dollars, or less, for each year of their age in excess of fifty-two years at date of joining.

Said funds so paid shall be remitted by the Clerk of the Camp to the Sovereign Clerk, as provided in Section 112, and it shall be placed in and credited to a separate fund, designated "The Emergency Fund."

DEFENDANT'S EXHIBIT "F"

[fol. 81] Section 56. (a) In order to pay death losses, disability benefits, monument obligations, emergency fund and Sovereign Camp general fund dues, every applicant admitted to membership in the Sovereign Camp, Woodmen of the World, on or after Sept. 1st, 1901, and to whom a beneficiary certificate is issued, shall annually pay to the Sovereign Clerk, in advance, an assessment based on their ages at nearest birthday at date of entry (except as otherwise provided in Sections 42 and 43 of the Constitution and Laws) as specified in the following table of rates:

Annual						
Age	\$500	\$1000	\$1500	\$2000	\$2500	\$3000
18.....	7.80	9.60	13.80	17.40	21.60	25.20
19.....	7.92	9.84	14.04	17.76	21.96	25.56
20.....	8.04	10.08	14.28	18.00	22.20	25.92
21.....	8.16	10.20	14.52	18.36	22.56	26.40
22.....	8.28	10.32	14.76	18.72	22.92	26.88
23.....	8.40	10.44	15.12	18.96	23.16	26.36
24.....	8.52	10.56	15.36	19.32	23.52	27.96
25.....	8.64	10.68	15.48	19.56	24.00	28.56
26.....	8.76	10.80	15.60	19.80	24.60	28.80
27.....	8.88	11.16	16.08	20.40	25.56	29.64
28.....	9.00	11.40	16.56	21.00	26.40	30.48
29.....	9.12	11.76	17.04	21.60	27.00	31.44
30.....	9.24	12.00	17.40	22.20	27.60	32.40
31.....	9.36	12.36	17.88	22.68	28.56	33.36
32.....	9.48	12.72	18.48	23.40	29.40	34.32
33.....	9.60	12.96	18.96	24.00	30.00	35.16
34.....	9.72	13.20	19.20	24.60	30.60	36.00
35.....	9.96	13.80	19.80	25.68	31.80	37.44
36.....	10.32	14.16	20.64	26.64	33.00	38.88
37.....	10.56	14.40	21.48	27.48	34.20	40.20
38.....	10.80	15.00	22.20	28.20	35.40	41.40
39.....	11.04	15.36	22.80	29.04	36.60	42.60
40.....	11.28	15.84	23.40	29.88	37.56	43.80
41.....	11.40	16.20	24.00	30.60	38.40	45.00
42.....	11.76	16.80	24.96	31.80	49.20	60.00
43.....	12.00	17.40	25.80	33.00	61.80	74.40
44.....	12.48	18.00	26.76	34.20	62.76	76.08
45.....	12.84	18.60	27.84	35.40	63.84	77.16
46.....	13.20	19.20	28.80	36.60	64.80	78.00
47.....	13.80	20.40	30.60	39.00	67.80	81.00
48.....	15.00	22.20	33.60	42.60	70.80	84.60
49.....	15.60	23.40	44.40	59.40	73.80	88.80
50.....	17.40	26.40	46.80	62.40	77.40	93.00
51.....	19.20	30.00	48.60	64.80	81.00	97.20
52.....	21.60	34.80	51.60	68.40	85.20	102.60

[fol. 82] (b) Provided, however, that members should they so elect, may pay same in twelve monthly installments to the Clerk of their Camp on or before the first day of each month based on the following table of payments:

Age	\$500	\$1000	\$1500	\$2000	\$2500	\$3000
18.....	\$0.65	\$0.80	\$1.15	\$1.45	\$1.80	\$2.10
19.....	.66	.82	1.17	1.48	1.83	2.13
20.....	.67	.84	1.19	1.50	1.85	2.16
21.....	.68	.85	1.21	1.53	1.88	2.20
22.....	.69	.86	1.23	1.56	1.91	2.24
23.....	.70	.87	1.26	1.58	1.93	2.28
24.....	.71	.88	1.28	1.61	1.96	2.33
25.....	.72	.89	1.29	1.63	2.00	2.38
26.....	.73	.90	1.30	1.65	2.05	2.40
27.....	.74	.93	1.34	1.70	2.13	2.47
28.....	.75	.95	1.38	1.75	2.20	2.54
29.....	.76	.98	1.42	1.80	2.25	2.62
30.....	.77	1.00	1.45	1.85	2.30	2.70
31.....	.78	1.03	1.49	1.89	2.38	2.78
32.....	.79	1.06	1.54	1.95	2.45	2.86
33.....	.80	1.08	1.58	2.00	2.50	2.93
34.....	.81	1.10	1.60	2.05	2.55	3.00
35.....	.82	1.15	1.65	2.14	2.65	3.12
36.....	.86	1.18	1.72	2.22	2.75	3.24
37.....	.88	1.20	1.79	2.29	2.85	3.35
38.....	.90	1.25	1.85	2.35	2.95	3.45
39.....	.92	1.28	1.90	2.42	3.05	3.55
40.....	.94	1.32	1.95	2.49	3.13	3.65
41.....	.95	1.35	2.00	2.55	3.20	3.75
42.....	.98	1.40	2.08	2.65	4.10	5.00
43.....	1.00	1.45	2.15	2.75	5.15	6.20
44.....	1.04	1.50	2.23	2.85	5.23	6.34
45.....	1.07	1.55	2.32	2.95	5.32	6.43
46.....	1.10	1.60	2.40	3.05	5.40	6.50
47.....	1.15	1.70	2.55	3.25	5.65	6.75
48.....	1.25	1.85	2.80	3.55	5.90	7.05
49.....	1.30	1.95	3.70	4.95	6.45	7.40
50.....	1.45	2.20	3.90	5.20	6.45	7.75
51.....	1.60	2.50	4.05	5.40	6.75	8.10
52.....	1.80	2.90	4.30	5.70	7.10	8.55

(c) Every applicant admitted to membership prior to September 1st, 1901, shall pay the same rate as prescribed for members admitted on or after September 1, 1901; provided, they may elect to continue paying the same assessment they are now paying, and vesting in the Sovereign Camp, Woodmen of the World, authority to deduct from [fol. 83] the amount to be paid their beneficiaries such de-

ficiency as a compilation may show exists between the amount paid by them and the amount paid by the members entering the Society on or after September 1st, 1901. The assessments collected according to the foregoing tables of rates shall be known as the Sovereign Camp fund.

(d) Provided, that failure to pay the advance rate on or before October 1st, 1915, by any member, shall be construed as an acceptance of the option for a lien to be entered against his certificate.

(e) In event the insured has not paid his annual assessment in advance but has paid installments of his assessment and dues up to and including the month of his death, the Sovereign Camp shall deduct from the amount of his certificate the balance due for the installments to cover the entire annual assessment.

(f) The Sovereign Clerk shall segregate the Sovereign Camp fund each month by placing in the general fund not to exceed 15 per cent thereof as shall be determined by the Sovereign Executive Council, and 10 per cent thereof in the emergency fund. The remaining amount shall constitute the beneficiary fund of the Sovereign Camp.

DEFENDANT'S EXHIBIT "G"

Section 56. (a) In order to pay death losses, disability [fol. 84] benefits, monument obligations, emergency fund and Sovereign Camp general fund dues, every applicant admitted to membership in the Sovereign Camp, Woodmen of the World on or after September 1st, 1901, and to whom a beneficiary certificate is issued, shall annually pay to the Sovereign Clerk, in advance, an assessment based on their ages at nearest birthday at date of entry (except as otherwise provided in Sections 42 and 43 of the Constitution and Laws) as specified in the following table of rates:

Annual

Age	\$500	\$1000	\$1500	\$2000	\$2500	\$3000
18.....	7.80	9.60	13.80	17.40	21.60	25.20
19.....	7.92	9.84	14.04	17.76	21.96	25.56
20.....	8.04	10.08	14.28	18.00	22.20	25.92
21.....	8.16	10.20	14.52	18.36	22.92	26.40
22.....	8.28	10.32	14.76	18.72	23.16	26.88
23.....	8.40	10.44	15.12	18.96	23.52	27.36
24.....	8.52	10.56	15.36	19.32	24.00	27.96
25.....	8.64	10.68	15.48	19.56	24.60	28.56
26.....	8.76	10.80	15.60	19.80	25.56	29.64
27.....	8.88	11.16	16.08	20.40	26.40	30.48
28.....	9.00	11.40	16.56	21.00	27.00	31.44
29.....	9.12	11.76	17.04	21.60	27.60	32.40
30.....	9.24	12.00	17.40	22.20	28.56	33.36
31.....	9.36	12.36	17.88	22.68	28.85	34.32
32.....	9.48	12.72	18.48	23.40	29.40	35.16
33.....	9.60	12.96	18.96	24.00	30.00	36.00
34.....	9.72	13.20	19.20	24.60	30.60	37.44
35.....	9.96	13.80	19.80	25.68	31.80	37.75
36.....	10.32	14.16	20.64	26.64	33.00	38.88
37.....	10.56	14.40	21.48	27.48	34.20	40.20
38.....	10.80	15.00	22.20	28.20	35.40	41.40
39.....	11.04	15.36	22.80	29.04	36.60	42.60
40.....	11.28	15.84	23.40	29.88	37.56	43.80
41.....	11.40	16.20	24.00	30.60	38.40	45.00
42.....	11.76	16.80	24.96	31.80	49.20	60.00
43.....	12.00	17.40	25.80	33.00	61.80	74.40
44.....	12.48	18.00	26.76	34.20	62.76	76.08
45.....	12.84	18.60	27.84	35.40	63.84	77.16
46.....	13.20	19.20	28.80	36.60	64.80	78.00
47.....	13.80	20.40	30.60	39.00	67.80	81.00
48.....	15.00	22.20	33.60	42.60	70.80	84.60
49.....	15.60	23.40	44.40	59.40	73.80	88.80
50.....	17.40	26.40	46.80	62.40	77.40	93.00
51.....	19.20	30.00	48.60	64.80	81.00	97.20
52.....	21.60	34.80	51.60	68.40	85.20	102.60

[fol. 85] (b) Provided, however, that members, should they so elect, may pay same in twelve monthly installments to the Clerk of their Camp on or before the first day of each month based on the following table of payments:

Age	\$500	\$1000	\$1500	\$2000	\$2500	\$3000
18.....	.65	.80	1.15	1.45	1.80	2.10
19.....	.66	.82	1.17	1.48	1.83	2.13
20.....	.67	.84	1.19	1.50	1.85	2.16
21.....	.68	.85	1.21	1.53	1.88	2.20
22.....	.69	.86	1.23	1.56	1.91	2.24
23.....	.70	.87	1.26	1.58	1.93	2.28
24.....	.71	.88	1.28	1.61	1.96	2.33
25.....	.72	.89	1.29	1.63	2.00	2.38
26.....	.73	.90	1.30	1.65	2.05	2.40
27.....	.74	.93	1.34	1.70	2.13	2.47
28.....	.75	.95	1.38	1.75	2.20	2.54
29.....	.76	.98	1.42	1.80	2.25	2.62
30.....	.77	1.00	1.45	1.85	2.30	2.70
31.....	.78	1.03	1.49	1.89	2.38	2.78
32.....	.79	1.06	1.54	1.95	2.45	2.86
33.....	.80	1.08	1.58	2.00	2.50	2.93
34.....	.81	1.10	1.60	2.05	2.55	3.00
35.....	.83	1.15	1.65	2.14	2.65	3.12
36.....	.86	1.18	1.72	2.22	2.75	3.24
37.....	.88	1.20	1.79	2.29	2.85	3.35
38.....	.90	1.25	1.85	2.35	2.95	3.45
39.....	.92	1.28	1.90	2.42	3.05	3.55
40.....	.94	1.32	1.95	2.49	3.13	3.65
41.....	.95	1.35	2.00	2.55	3.20	3.75
42.....	.98	1.40	2.08	2.65	4.10	5.00
43.....	1.00	1.45	2.15	2.75	5.15	6.20
44.....	1.04	1.50	2.23	2.85	5.23	6.34
45.....	1.07	1.55	2.32	2.95	5.32	6.43
46.....	1.10	1.60	2.40	3.05	5.40	6.50
47.....	1.15	1.70	2.55	3.25	5.65	6.75
48.....	1.25	1.85	2.80	3.55	5.90	7.05
49.....	1.30	1.95	3.70	4.95	6.15	7.40
50.....	1.45	2.20	3.90	5.20	6.45	7.75
51.....	1.60	2.50	4.05	5.40	6.75	8.10
52.....	1.80	2.90	4.30	5.70	7.10	8.55

(c) Every applicant admitted to membership prior to September 1st, 1901, shall pay the same rate as prescribed for members admitted on or after September 1st, 1901; provided, they may elect to continue paying the same assessment they are now paying, and vesting in the Sovereign Camp, Woodmen of the World, authority to deduct from [fol. 86] the amount to be paid their beneficiaries such deficiency as a compilation may show exists between the amount paid by them and the amount paid by the members entering the Society on or after September 1st, 1901. The assessments collected according to the foregoing tables of rates shall be known as the Sovereign Camp fund.

(d) Provided, that the failure to pay the advance rate on or before October 1st, 1915, by any member, shall be construed as an acceptance of the option for a lien to be entered against his certificate.

(e) In event the insured has not paid his annual assessment in advance but has paid installments of his assessment and dues up to and including the month of his death, the Sovereign Camp shall deduct from the amount of his certificate the balance due for the installments to cover the entire annual assessment.

(f) The Sovereign Clerk shall segregate the Sovereign Camp fund each month by placing in the general fund not to exceed 15 per cent thereof as shall be determined by the Sovereign Executive Council, and 10 per cent thereof in the emergency fund. The remaining amount shall constitute the beneficiary fund of the Sovereign Camp.

(g) Persons classed as sub-standard risks by the Sovereign Camp Physician on account of impairments in family history, personal history, build, occupation, environment or bodily defect, may be admitted to membership if accepted [fol. 87] by the Sovereign Physician, but their assessment rate shall be the same as those given in this section for persons of advanced ages with similar expectancies.

DEFENDANT'S EXHIBIT "J"

Proceedings of the Third Biennial Session of the Sovereign Camp of the Woodmen of the World Held at Memphis, Tenn., March, 1899

Wednesday, March 22nd, 1899

Morning Session

Convention called to order. Sovereign Commander J. C. Root in the chair. Roll being called, all officers and delegates present.

On motion of Sovereign E. B. Hollings, convention resolves itself into Committee of the Whole to consider report of Committee on Legislation.

On motion of Sovereign W. H. Hughes, the Committee of the Whole now arises to make their report to the Sovereign Camp.

Sovereign Commander J. C. Root in the chair.

Chairman of the Committee of the Whole reports to Sovereign Camp.

On motion recess taken until this afternoon at 2 o'clock.

Afternoon Session—2 o'clock P. M.

Sovereign F. A. Falkenburg in the chair.

[fol. 88] On motion recess taken till tomorrow morning at nine o'clock.

Thursday, March 23, 1899

Morning Session

Meeting called to order pursuant to recess. Sovereign Commander Elect J. C. Root in the chair.

On roll call all officers and delegates present.

On motion, reading of minutes of previous session dispensed with.

On motion, Convention takes up consideration of report of Committee of the Whole.

Sovereign Commander Falkenburg in the chair.

Recess taken until this afternoon at 2 o'clock.

Afternoon Session

Pursuant to recess convention called to order at 2 o'clock P. M. Sovereign Commander F. A. Falkenburg in the chair. All officers and delegates present, excepting those excused.

Section 68 was declared repealed by a two-thirds vote of all the members constituting the Sovereign Camp.

On motion, Convention adjourned until tomorrow morning at nine o'clock.

[fol. 89]

DEFENDANT'S EXHIBIT "K"

Boling Pleasant
R F D 4

8- 170

6- 396

7- 949

Maryville Mo.
166-Arkoe-8955

47

FMR

Died 7-18-33

July 1-12 Nov. 1-12 Jan. 1-13 Apr. 1-13 June 1-13

Feb. 1-16 Aug. 1-16

Sept. 1-12 Jan. 1-13 Feb. 1-13 May 1-13 July 1-13 Mch. 1-16

Due bal. of Annual Asst. Inst. Susp.

If Claim is approved Inst. No. 6-16 Tabulated

Claim Dept.

PLATE KILLED

8-3-33.

DEFENDANT'S EXHIBIT N (Also Identified as Plaintiff's
Exhibit 4)

Mr. J. D. Bolin, Bolckow, Missouri.

Pleasant Bolin, Deceased

DEAR SIR:

We are in receipt of your communication of August 1st, giving notice of the death of the above named. In reply we are sorry to advise that we find after having made a careful examination of the membership records in the Secretary's office that this decedent became suspended August 1st, 1916, by reason of his failure to pay the monthly installment for the month of July under the certificate which he formerly held.

[fol. 90] This certificate became null and void on the date of his suspension and there, is therefore, no liability whatever, thereunder, by reason of his subsequent death.

The Association in denying liability on the above grounds, does not waive any other defense which it may have against the payment of this certificate.

Yours very truly, Claim Department, by H. T. McCarty.

LN.

DEFENDANT'S EXHIBIT "O" (Also Identified as Plaintiff's Exhibit 2)

No enclosures.

Cashier Dept. W.

Aug. 2 1933.

Received Aug. 3 1933. Claim Dept.

Bolckow, Missouri, August 1, 1933.

Woodmen of the World, Omaha, Nebraska.

GENTLEMEN:

Pleasant Bolin who held your paid up certificate for \$1000.00 No. 8955, dated June 5, 1896, died July 18, 1933, near Barnard, Nodaway County, Missouri.

The Camp to which he belonged at Arkoe seems to be out of business, so please send me your usual blanks to make proof of death.

Yours truly, J. D. Bolin.

[fol. 91] (Following pencil notation appears on said Exhibit):

Pleasant Bolin.

166 Mo. Arkoe 8955.

E-1.70.

6-3-96.

7-9-96.

47.

Susp Aug. 1-16.

Out 17-1.

Card Marked. App. up to Ins. Bldg.

DEFENDANT'S EXHIBIT "P" (Also Identified as Plaintiff's Exhibit 3)

**Sovereign Camp
Woodmen of the World
Omaha Nebr.**

June 27th, 1933.

Mr. Pleasant Bolin, Barnard, Mo.

DEAR SIR:

In reply to your letter of recent date, we regret to state that your beneficiary certificate is not in force and therefore, we cannot make a change of beneficiary on it.

Our records show the certificate suspended August 1st, 1916 and having lapsed out, has forfeited all rights, benefits and privileges that were contained in it.

Very truly yours, J. T. Yates, Secretary.

CL•A.

[fol. 92] Thereupon, The Articles of Incorporation were marked by the reporter, Defendant's Exhibit Q.

Senator Ford: We offer Exhibit Q in evidence, being the Articles of Incorporation.

The Court: The objections to Exhibit Q are by the Court overruled and Exhibit Q is admitted in evidence.

DEFENDANT'S EXHIBIT "Q"

**Articles of Incorporation of the Sovereign Camp of the
Woodmen of the World**

Be it hereby known that the undersigned, who are of lawful age and all citizens of the United States, residing as stated after each of our signatures hereto, respectively, do associate ourselves together for the purpose of organizing a secret, fraternal, charitable and benevolent association, with the objects and powers hereinafter stated, and for the purpose of becoming incorporated under the laws and regulations of the State of Nebraska, and in conformity to its requirements.

Article 1.

The name of this corporation shall be "Sovereign Camp of the Woodmen of the World," with powers to make its own Constitution, Laws, rituals, rules of order and discipline, and secret work, and have supervisory and legislative control over the general laws and regulations of the Sovereign Camp and its jurisdiction and all its subordinate branches.

[fol. 93]

Article 2

The principal place of business shall be in the city of Omaha, state of Nebraska, but it may be conducted elsewhere by a two-thirds vote of its Executive Council.

Article 3

The object of this Order and these articles incorporating is to organize and establish a social, fraternal, beneficiary and benevolent order by combining and associating together white male persons of sound bodily health, exemplary habits and good moral character between the ages of sixteen and sixty years, with power in the Sovereign Executive Council to hereafter change the ages of admission to eighteen years and not over fifty, or fifty-five years, should it be deemed to the interest of the Order to do so.

To create a fund from which, upon reasonable and satisfactory proofs of the death of a member in good standing holding a beneficiary certificate, there shall be paid the proceeds of one assessment upon the surviving members, from whom the same can be legally collected a sum not to exceed Three Thousand Dollars (\$3,000.00) to the designated beneficiary of said deceased member according to the terms of the beneficiary certificate, or if none survive; to such beneficiary as the conditions of the laws of said Order shall provide.

Article 4

The corporation being fraternal and benevolent in its nature, without any pecuniary profit to the incorporation, [fol. 94] officers or directors other than compensation for the services rendered and expenses incurred in behalf thereof as provided by its laws and acts of its Executive Council, will have no capital stock or resources other than

such property as may be acquired for its corporate and society purposes and its general fund accounts, from which all salaries, supplies and general indebtedness shall be paid, and the beneficiary fund, from which only death claims and tombstone for each deceased person shall be paid, said funds to be replenished from time to time by assessments as provided by the laws of the Order controlling the same.

Article 10

This corporation hereby assumes all obligations heretofore created, ratifies all meetings and business transactions in the name of, or for the Woodmen of the World, and its Sovereign Camp, provisional officers, agents and employees, and assumes the liabilities and obligations thereof as fully as can be done under its Constitution and By-Laws, but not for the payment of the full amount of the beneficiary certificates except as may be realized from one assessment against all the members in good standing at the time of a death of a member.

Article 13

This corporation shall commence from January 1st, 1891, and to include and assume all preliminary business transacted prior thereto in view of a permanent organization and continue fifty years with power to reincorporate.

[fol. 95]

Article 19

These articles of incorporation may be altered or amended at any time at any meeting of the Executive Council by a two-thirds vote of the members present or at a special or biennial meeting of the Sovereign Camp by a two-thirds vote of the legal delegates present, provided that the proposed amendment shall be filed with the Sovereign Consul Commander at least thirty days before action shall be taken thereon.

Witness our signatures this first day of January, 1891.

Signature	Residence
Joseph C. Root	Lyons, Iowa
William O. Rodgers	Omaha, Nebraska
W. N. Dorward	Omaha, Nebraska
John McClintock	Omaha, Nebraska
John T. Yates	Omaha, Nebraska
George S. Cott	Omaha, Nebraska

Signature	Residence
R. A. L. Dick	Omaha, Nebraska
M. T. Moss	Omaha, Nebraska
James E. Van Gilder	Omaha, Nebraska
Gottlieb F. Elsasser	Omaha, Nebraska
C. P. Heffley	Omaha, Nebraska
George S. Meck	Omaha, Nebraska

Thereupon, a Certified Transcript of Chapter 18, of the Laws of Nebraska, was marked by the reporter Defendant's Exhibit R.

Senator Ford: We offer in evidence Defendant's Exhibit R, being a certified transcript of Chapter 18 of the Laws of the State of Nebraska.

[fol. 96] The Court: Which objections to Exhibit R are by the Court overruled and said Exhibit R is admitted in evidence.

DEFENDANT'S EXHIBIT "R"

Apr. 13 1934

— — —, Reporter

Darius M. Amsberry, Secretary of State.

William L. Gaston, Deputy.

United States of America

(Seal:) Great Seal of the State of Nebraska, March 1st,
1867

Fee \$1.75.

STATE OF NEBRASKA:

I, Darius M. Amsberry, Secretary of State, of the State of Nebraska, do hereby certify that

The attached is a true and correct copy of Chapter 18 of Laws of Nebraska, passed by Legislative Assembly at 20th session held in 1887, Chapter approved March 29, 1887.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State of Nebraska. Done at Lincoln, this 19th day of January in the year of our Lord One Thousand Nine Hundred and Twenty, and of the

[fol. 97] Independence of the United States the One Hundred and Forty-Fourth and of this State the Fifty-Third.

Darius M. Amsberry, Secretary of State, W. L. Gaston, Deputy. (Seal.)

Act March 29, 1887

~~Corporations~~, Exempting Secret Societies

An Act to exempt secret societies and associations from the requirements of chapter sixteen (16) of the Compiled Statutes of 1885, to define the duties, powers, and obligations of such societies and associations, and to provide penalties for violations thereof

Be it enacted by the Legislature of the State of Nebraska:

Section 1.

That any secret society or association, the management and control of which is confined to the membership of any secret society or order, heretofore organized or which may hereafter be organized, which in addition to the benevolent and fraternal features thereof, shall also issue certificates of indemnity calling for the payment of a certain sum, known and defined, in case of the death, disability, or sickness of any of its members, to the wife, widow, orphan or orphans, or other persons dependent upon such members, shall be exempt from the provisions of chapter twenty-five (25) of the Revised Statutes of 1866 of the Territory (now [fol. 98] State) of Nebraska, the same being chapter sixteen (16) of the Compiled Statutes of 1885:

Provided, That such secret society or association as aforesaid shall comply with all the requirements of this act.

Section 2

Within thirty (30) days after the taking effect of this act, such society as aforesaid shall, by its presiding officer or recording officer, or both of them, file a certificate in the office of the auditor of public accounts setting forth the total number of members in good standing in such society or association at the date of the taking effect of this act, the name, title, and postoffice address of each of the chief officers of such society or association; the plan of assessment upon which funds are provided to pay the certificate of indemnity

issued by such society or association, together with a certified copy of the constitution and by-laws of such society. If, from such statements, the auditor of public accounts shall be satisfied that such society or association has a sufficient membership to pay a certificate so issued by such society or association in case of the death of any of its members, by its usual method of assessment, he shall issue to such society or association a certificate authorizing it to transact its business for one year.

Section 3

On the first day of January of each year, or within fifteen days thereafter, such society or association shall, by its [fol. 99] presiding or recording officer or both of them, file with the auditor of public accounts, a sworn statement, setting forth the total number of members in good standing on the first day of January of that year; the total number of members who have been suspended for non-payment of dues, or assessments for the twelve months next preceding the date of the report, the name of each member deceased during the year next preceding the date of the report, together with the amount of money paid to each, the number of claims resisted and the reasons for resisting the payment thereof; the total amount collected for the payment of certificates of indemnity hereinbefore provided for; the amount due and unpaid upon certificates of deceased members, the total amount on hand in such fund and the amount paid out in such fund. If the auditor shall be satisfied that such society or association has a sufficient membership to pay its certificate in full in case of the death of any of its members, by its usual method of assessment, he shall issue his certificate authorizing such society or association to transact its business for the term of one year from the first day of January next preceding the date of the report.

Section 4

If, at any time, the auditor shall be credibly informed that the membership of such society or association has fallen below a number sufficient to produce the amount required to pay a certificate of membership in full, in case of the death of any of its members he shall cause an investigation to be made of the affairs of such society, or association, [fol. 100] at the expense of such society or association, and

if he shall become satisfied that its membership has fallen below the number required as aforesaid, he shall revoke the certificate provided for in section three of this chapter, and it shall be unlawful for such society, or association to further transact any business within the State of Nebraska.

Section 5

Before any change in the constitution or by-laws of any such society or association shall take effect, a copy of the same shall be filed in the office of the auditor of public accounts.

Section 6

All moneys collected by any such society or association for the payment of its certificates of indemnity, shall be used for that purpose, and none other.

Section 7

Any person or persons violating the provisions of this act shall, upon conviction thereof, be imprisoned in the penitentiary for not more than five nor less than one year.

Section 8

This act shall only apply to secret, benevolent, fraternal societies.

Section 9

Any officer of any such society or association, who shall embezzle or appropriate any of the moneys or property of [fol. 101] any such society or association to his own use, shall be deemed guilty of embezzlement, and shall, upon conviction thereof, be punished accordingly.

Section 10

An emergency exists, this act shall take effect and be in force from and after its passage.

Approved March 29, 1887.

Thereupon, a certain file of papers, was marked by the reporter Defendant's Exhibit S.

Senator Ford: We offer in evidence Defendant's Exhibit S, being a transcript of the record of the Supreme Court of

the State of Nebraska in the case of Prince L. Trapp v. Sovereign Camp of Woodmen of the World.

The Court: The objections to Defendant's Exhibit S will be overruled and the Exhibit admitted in evidence.

DEFENDANT'S EXHIBIT "S"

Apr. 13, 1934

— — —, Reporter

No. 19940

TRAPP

v.

SOVEREIGN CAMP OF THE WOODMEN OF THE WORLD

Pleas: Before the Supreme Court of the State of Nebraska, at a term thereof begun and holden at the Capitol in the City of Lincoln, in said State, on the eighteenth day of September, A. D. 1916

[fol. 102] Present: Hon. Andrew M. Morrissey, Chief Justice, Hon. Charles B. Letton, Judge, Hon. John B. Barnes, Judge, Hon. Jacob Fawcett, Judge, Hon. Samuel H. Sedgwick, Judge, Hon. Francis G. Hamer, Judge, Hon. William B. Rose, Judge.

Attest: Harry C. Lindsay, Clerk.

Be It Remembered, That on the twenty-second day of November, 1916, there was filed in the office of the Clerk of said Supreme Court of Nebraska a certain Transcript, in the words and figures following, to-wit:

Pleas before the Honorable Geo. A. Day, one of the Judges and the Presiding Judge of the District Court of the Fourth Judicial District of the State of Nebraska, at a Term Thereof within and for the County of Douglas, begun and held at the City of Omaha, on the 18th day of September, A. D. 1916

Be It Remembered, That in a certain cause heretofore pending in the District Court of Douglas County State of

Nebraska entitled Prince L. Trapp v. Sovereign Camp of the Woodmen of the World, a corporation appearing on Docket 143 No. 284 there was filed in the office of the Clerk of said Court on the 29th day of March, 1916, a certain Petition which said Petition is in the words and figures following, to-wit:

[fol. 103] IN THE DISTRICT COURT OF DOUGLAS COUNTY,
NEBRASKA

PRINCE L. TRAPP, Plaintiff,

VS.

SOVEREIGN CAMP OF THE WOODMEN OF THE WORLD, a Corporation,
Defendant

PETITION

Comes now the plaintiff, for and on behalf of himself and all others similarly situated, and for cause of action against the defendant, alleges:

1. That the plaintiff is and at all times hereinafter mentioned has been a citizen and resident of the State of Missouri, and that the defendant is now and at all times hereinafter mentioned has been a corporation, duly organized and doing business under the laws of the State of Nebraska, with its principal place of business in Omaha, Nebraska, and organized for the purpose of providing for its members funds for their relief, and upon the death of a member, to pay to the beneficiary of the deceased member certain specified sums, and in general to conduct a fraternal insurance organization.

2. That for the purpose of inducing this plaintiff to become a member of this organization, this defendant, through its duly authorized officers and agents, on and immediately preceding the 11th day of March, 1895, stated and represented to this plaintiff, both orally and in writing:

“Every persistent member who remains a member in good standing to the end of the term prescribed shall become a life member, and thereafter shall be entitled to wear the badge of distinction as such, he shall be assigned a seat reserved for such members and shall receive the honors of the [fol. 104] Fraternity when visiting the Camp. He shall not

thereafter be required to pay any assessment or dues and shall receive a paid-up certificate, payable at death to his designated beneficiary.

"Those joining between the ages of 16 and 33 become life members in thirty years; those joining between the ages of 33 and 43 become life members in twenty-five years.

"Those joining at over 43 years of age will become life members in twenty years.

"This is the most equitable feature ever introduced into Fraternal life insurance."

and relying upon the statements and representations as above set forth, believing them to be true, this plaintiff, who at said time was of the age of forty-four years and in good health and strength, complying with all of the requirements of said order, made application for membership, and after making all payments required of him by the defendant herein, duly became a member and was initiated into Maple Camp No. 107, located at Graham, in the State of Missouri, and received from the defendant a certificate of membership, in writing, under the seal of the defendant, a copy of which is hereto attached marked Exhibit "A" & made a part hereof, wherein and whereby it was agreed that the defendant would at the death of this plaintiff pay to Hattie A. Trapp, wife of this plaintiff, the sum of \$2,000.00, and the further sum of \$100.00 for the placing of a monument at the grave of this plaintiff, in consideration of the plaintiff's [fol. 105] complying with and conforming to the conditions, constitution, fundamental laws and such by-laws and rules as are or may be adopted by the Sovereign Camp, and said certificate to be incontestable after one year from date hereof, provided plaintiff had complied with all the requirements thereof. That said beneficiary certificate which was numbered 5299-Mo. contained a further clause, to-wit: "Rate 1-45 payments to cease after twenty years."

3. Plaintiff further alleges that at all times since the issuance of said certificate, to-wit: on the 11th day of March, 1895, this plaintiff has complied with all of the terms and conditions of said certificate, and has duly paid all of the rates and assessments required and demanded of him, and that on the 11th day of March, 1915, this plaintiff demanded of the defendant that it issue to him a paid-up certificate, and that it cease to demand from him the payment of any further sums or rates for insurance as provided in said

certificate; that in violation of the agreement by and between the plaintiff and defendant heretofore referred to, the defendant did then and has at all times since refused to issue said paid-up certificate, and the defendant, through its officers and agents, have at all times since the 11th day of March, 1915, and are now, demanding of this plaintiff that he continue to pay the assessments monthly, and threaten that if said payments are not made that the defendant will cause this plaintiff to be suspended and expelled from said Camp and be deprived of any and all right to insurance, as provided in said certificate, and that unless enjoined and restrained from so doing the defendant will, to the great [fol. 106] damage and injury of this plaintiff, cancel said policy of insurance and expel the plaintiff from the order, and deprive this plaintiff and his beneficiary of all their rights under said beneficiary's certificate.

4. Plaintiff further alleges that the defendant has at various times issued to members policies identical in terms with the policy issued to this plaintiff, and that the number of such outstanding policies at the time of bringing this action is in excess of two thousand, and that the members to whom such policies have been issued have in every way complied with the terms and conditions thereof, and are, as to all matters herein complained of, similarly situated with the plaintiff.

5. This plaintiff further alleges that at the time of joining the Order of the defendant, he was of the age of forty-four years, strong and healthy, and at the time of the commencement of this action he is of the age of sixty-five years; that he has passed the time of life when it is possible for him to procure insurance to take the place of the insurance guaranteed by the defendant in its certificate so as above set forth issued to this plaintiff, and will to that extent work an irreparable injury to this plaintiff, and this plaintiff is wholly without adequate remedy at law.

Wherefore, this plaintiff prays for decree of the court commanding and enjoining the defendant, its officers and agents, to forthwith issue to the plaintiff a paid-up certificate [fol. 107] of membership as above set forth or in lieu thereof, that this court adjudge and decree that certificate No. 5299-Mo. heretofore issued be declared to be a paid-up

certificate from and after the 11th day of March, 1915, and entitling the beneficiary named therein upon the death of this plaintiff to have and receive from the defendant, the sum of \$2,000.00, and the further sum of \$100.00 for a monument to be placed at the grave of this plaintiff—without further cost or expense in the premises to this plaintiff, or his beneficiary, and that the defendant, its officers and agents be forever enjoined from demanding of this plaintiff any further sum or sums as assessments for said insurance represented by said certificate, and from cancelling or interfering in any way with the certificate heretofore issued, and from expelling or threatening to expel plaintiff as a member of said order, and for such other and further relief as equity may require.

Vinsonhaler, McGuckin & Caldwell, Attorneys for Plaintiff, by Duncan M. Vinsonhaler.

Duly sworn to by Duncan M. Vinsonhaler. Jurat omitted in printing.

[fol. 108] Endorsed: 143-284. In the District Court of Douglas County, Nebraska. Prince L. Trapp Plaintiff vs. Sovereign Camp of the Woodmen of the World a corporation Defendant. Petition. Clerk's Fees \$5.50. Paid by Vinsonhaler, McGuckin & Caldwell Attorneys for plaintiff. Filed in District Court Douglas County, Nebr. Mar. 29, 1916. Robert Smith, Clerk. Issued.

Afterward, on the 23rd day of June, 1916, an Answer was filed herein, which said Answer is in the words and figures following, to-wit:

EXHIBIT "A" TO PETITION

Beneficiary Certificate

Number 5299 Mo.

Age 44

Amount \$2000.00

Rate 1 45 payments to
cease after 20 years.

Sovereign Camp Woodmen of the World

This Certificate issued by the Sovereign Camp of the Woodmen of the World by its authority Witnesseth, That

Sovereign Prince L. Trapp a member of Maple Camp No. 107 located at Graham State of Missouri is, while in good standing as a member of this Fraternity, entitled to participate in its Beneficiary Fund to the amount of Two Thousand Dollars payable at his death to Hattie A. Trapp His Wife by this Sovereign Camp unless said Camp shall have been set off in a separate Beneficiary jurisdiction. In that event, payment shall be made by the Head Camp of that jurisdiction. And there shall also be paid the sum of One Hundred Dollars for the placing of a Monument at his grave. This Certificate is issued and accepted subject to all the conditions on the back hereof and named in the Sovereign Constitution, Fundamental Laws and By-Laws of this Fraternity, and liable to forfeiture if said Sovereign shall not comply with said Conditions, Constitution, Fundamental Laws and such By-Laws and rules as are or may be adopted by the Sovereign Camp, Head Camp, or the Camp of the jurisdiction of which he is a member at the date of his decease. This certificate shall be incontestable after one year from date hereof provided the Sovereign to whom issued has complied with all the requirements hereon.

In Witness Whereof We have hereunto affixed our official signatures and impressed the seal of the Sovereign Camp. Done at Omaha, State of Nebraska, this 11th day of Mar. A. D. 1895.

J. C. Root, Sovereign Consul Commander. J. T. Yates, Sovereign Clerk. (Seal.)

He has made all payments required and was initiated as a [fol. 110] member of this Camp this Thirteenth day of March A. D. 1895.

James Vanlaningham, Consul Commander. W. L. Eshelman, Clerk, Maple Camp No. 107.

If this Camp is under the supervision of a Provisional Head Consul, then the following shall be countersigned by him.

Done at —, State of —, this — day, of —, A. D. 189—
—, Provisional Head Consul. (Seal.)

Conditions Referred in and Made a Part of This Certificate

1. This Certificate is issued in consideration of the representations and agreements made by the person named in

this Certificate in his application to become a member of this Fraternity, and also in consideration of the payment made when adopted in prescribed form, and his agreements to pay all assessments and dues that may be levied during the time he shall remain a member of the Woodmen of the World

2. In case of his death while a member of this Fraternity in good standing his beneficiary shall receive such sum as may be collected from an assessment upon all members according to the Certificates held by each, but said sum to be paid shall not exceed the amount stated on the face of this Certificate.

3. If the admission fee and dues are not paid as required by the laws of the Fraternity, and if Beneficiary Fund as- [fol. 111] sessments assessed against the person named in this Certificate are not paid the Clerk before the first day of the month following the levy of the same, then this Certificate shall be null and void, and continue so until payment is made and the requirements of the Constitutions, Fundamental Laws and By-Laws of this Fraternity have been complied with, in which event it shall become restored.

4. If the member holding this Certificate shall be expelled from the Fraternity, or become so far intemperate or use of opiates to such an extent as to permanently impair his health or to produce delirium tremens, or shall die in consequence of a duel, or by his own hand (except it be shown that he was at the time insane) or by the hands of the beneficiary or beneficiaries named herein (except by accident) or in consequence of the violation or attempted violation of the laws of the State or of the United States, or of any other province or nation or if any of the statements or declarations in the application for membership and upon the faith of which this Certificate is issued shall be found in any respect untrue, then in every such case this Certificate shall be null and void and of no effect and all moneys which shall have been paid, and all rights and benefits which may have accrued on account of this Certificate, shall be absolutely forfeited without notice or service.

Receipt of Beneficiary

At —, State of —, Received this — day of —, A. D. —, of the Woodmen of the World — Thousand Dollars in

[fol. 112] full payment of all benefits due and payable under this Certificate upon the death of — in consideration of which this Certificate is cancelled and surrendered.

Change of Amount or Devisee

I, —, to whom this Certificate was issued do hereby cancel and surrender this Certificate and order that a new one shall be issued, and that the benefit shall be of the amount of — Thousand Dollars and shall be made payable to — who bears relationship to myself of —.

Signed at —, State of —, this — day of — 189—. (Seal.)
Attest —, Clerk Camp No. —, Woodmen of the World.

Beneficiary Certificate

No. 5299. Amount \$2,000

Mr. P. L. Trapp

Woodmen of the World

A Benevolent Secret Beneficiary Fraternity

Important. The Member should see that his assessments and dues are all paid on or before the first day of every month. Assessments for the month also admission fees and dues must be paid before this certificate can be delivered.

[fol. 113] PRINCE L. TRAPP, Plaintiff vs. SOVEREIGN CAMP OF THE WOODMEN OF THE WORLD, Defendant

ANSWER

Comes now the Defendant above named and in answer to the petition of the Plaintiff herein denies each and every allegation therein contained, except such as hereinafter admitted.

Defendant admits the citizenship of Plaintiff and that it is a corporation organized under the laws of Nebraska and, with respect thereto, states:

I

That the purpose of and object of the incorporation of Defendant was to organize a Society which should combine

white, male persons of sound bodily health and good, moral character between the ages of eighteen and fifty-two years into a secret, fraternal, beneficiary and benevolent society; to provide funds for their relief; to comfort the sick and cheer the unfortunate in times of sorrow and distress; to promote fraternal love and unity and to create a fund from which, upon satisfactory proof of death of the beneficiary member who had complied with all the requirements of the Society, there should be paid a sum of not to exceed the sum of Three Thousand (\$3,000.00) Dollars, to certain person, or persons, as beneficiaries and to provide a monument to be erected at the grave of a deceased member and for such other matters as are more specifically set forth in the constitution and laws of Defendant hereinafter referred to.

[fol. 114]

II

Defendant admits that Plaintiff became a member of its Society through an application for membership therein and that a beneficiary certificate was issued to him, a copy of which is attached to Plaintiff's petition.

III

Defendant further admits that up to the 11th of March, 1915, the Plaintiff had paid the rates and assessments required and demanded of him and that he has demanded the issuance of a "paid-up" certificate, which has been refused and that unless the rates and assessments required by the constitution and by-laws of the Order are continued, that it will result in the cancellation of Plaintiff's beneficiary certificate.

IV

Defendant further admits that, between the years 1893 and 1897, it issued to its members who became members during that period beneficiary certificates similar to those issued to Plaintiff and there were issued during said time over 34,000 of said certificates, of which over 33,000 are still in existence, the holders thereof having continued their payments up to the present, the aggregate insurance called for by said certificate amounting to something over Sixty-two (\$62,000,000.00) Millions of Dollars and, with respect thereto.

Defendant further states that there had been issued prior to said time to the members of the defendant, approximately

Forty-five Hundred (4,500) certificates with benefits aggregating approximately Ten Millions of Dollars (\$10,000,000.00). The certificates issued between the years 1893 and 1897, on the right hand corner, contain the words: "Payments-to-cess," whereas, the certificates issued prior to said time do not contain the said words, nor do any certificates issued subsequent to said time contain the said words.

V

Defendant further admits that, at the time of joining the Order, Plaintiff was of the age of forty-four (44) years and at the time of the commencement of this action is of the age of sixty-five (65) years.

VI

Further, answering, this Defendant states that it was organized as a corporation under the laws of Nebraska, in January 1891, as a fraternal beneficiary association, a copy of the Articles of Incorporation being attached hereto marked Exhibit "A" and made a part hereof. That said Articles of Incorporation were duly filed and recorded in February, 1891, in accordance with the laws of Nebraska, and all the laws of the State fully complied with with respect thereto; that under said Articles of Incorporation and under the laws of Nebraska, with respect to beneficiary certificates, it was authorized to create a fund from which, upon reasonable and satisfactory proof of death of a member in good standing holding a beneficiary certificate, there should be paid the proceeds of one assessment upon surviving members from whom the same could be legally collected, a sum [fol. 116] not to exceed Three Thousand (\$3,000.00) Dollars, the same to be paid to the designated beneficiary in said certificate.

Whereby this Defendant states that it had no power and its officers and agents had no power to issue beneficiary certificates except in accordance with its Articles of Incorporation and the laws of Nebraska with respect thereto.

VII

Defendant further states that after its incorporation a constitution and by-laws was duly enacted and the same filed in accordance with the laws of Nebraska, a copy of its laws of 1891 being hereto attached, marked Exhibit "B"

and made a part hereof. And, acting thereunder, this Defendant proceeded with the business and purposes of its organization, organizing Camps, initiated members therein and issued, prior to 1893, beneficiary certificates to the number as above set forth and carrying benefits to the amount as above set forth.

VIII

Wherefore, this Defendant states that, under its Articles of Incorporation, it had the power to issue beneficiary certificates to its members, the amount thereof to be paid upon the death of a member in good standing to the beneficiary named in said beneficiary certificate, the proceeds of one assessment upon surviving members and it had no right or power to issue any other kind, or class, of certificate.

[fol. 117]

IX

Further answering, this Defendant states that, at a meeting of the Executive Council held on the 18th day of January, 1893, a purported Resolution was passed, as follows:

“Resolved, that life membership certificates shall be issued by the Sovereign Camp to all members of the Woodmen of the World under the following conditions:—When the certificate of a Sovereign who has entered the organization between the years of 16 and 33 and has been in force and binding for 30 years; or members entering at 34 to 42 years of age, when the certificate has attained the age of 25 years and of all members entering the Order over 43 years of age, when the certificate has attained the age of 20 years, that after said life membership certificate has been issued, the life members shall not be liable for dues, assessments or per capita tax; that the Sovereign Managers shall quarterly issue assessment calls upon all members of the Woodmen of the World regardless of jurisdiction, or nation, for a sufficient amount to pay all death claims accruing during the previous three months for said life members who had died during said time under this provision, and that any life member visiting a camp shall be greeted with the honors of this fraternity, and shall be seated at the right of the Consul Commander and shall be entitled to wear a life membership badge to be designed and prescribed by the Sovereign Camp.”

With respect thereto this Defendant states that the said Executive Council had no authority, or power, to pass said [fol. 118] Resolution because the same was not in accordance with its Articles of Incorporation and, in fact, was contrary to the same and was ultra vires and void because no power existed in said corporation to issue beneficiary certificates except in accordance with the Articles of Incorporation and no power existed to issue what is known as "limited payment insurance," or any other beneficiary certificate except upon payment by members holding the same of all dues and assessments levied during the lifetime of such member and while he continued a member of the Order.

X

Defendant further states that said Resolution was not filed in the office of the Auditor of Public Accounts as required by the Statutes of Nebraska, so that the said Resolution had no force and effect whatsoever in that the same was not filed in accordance with the laws of the State.

XI

Defendant further states that, at a meeting of the Sovereign Camp of the Order, held in March, 1895, the above Resolution was passed, the same not to be effective, however, until July of said year; but, with respect thereto, this defendant states that the Sovereign Camp had no authority, or power, to pass said Resolution or to authorize the issuance of so-called "payment-to-cess" certificates, for that under the Articles of Incorporation of the Defendant no beneficiary certificates could be issued except upon payment [fol. 119] by members of the dues and assessments during the entire period of the member's life and while he continued a member of the Order.

XII

Defendant further states that prior to becoming a member of the Order the Plaintiff made application to Defendant to become a member thereof, a copy of his said application being hereto attached, marked Exhibit "C" and made a part hereof, and in that regard this Defendant states that the rights of Plaintiff in said Order and the beneficiary certificate issued to him are to be construed in accordance with the application, the beneficiary certificate, the Articles of

Incorporation of Defendant and the constitution and by-laws of the Order properly and legally enacted; and, in that regard, this Defendant states that the certificate issued to Plaintiff was issued and accepted subject to all the conditions on the back thereof and all the conditions named in the constitution and laws of the fraternity and was liable to forfeiture if said member did not comply with said constitution and laws and such by-laws and rules "as are or may be adopted" by the Sovereign Camp, Head Camp or the Camp or Jurisdiction of which he was a member at the date of his decease.

And, in that regard, this Defendant further states that the Sovereign Camp is a representative body composed of delegates selected by the entire membership and authorized to enact rules and by-laws which shall be binding upon the entire membership; and, at a meeting of the Sovereign [fol. 120] Camp, duly held in 1897 and subsequently, at a meeting of the Sovereign Camp duly held in 1899, the provision, or resolution, with respect to what is known as the "life membership" certificates with respect to the clause exempting such members from payment of dues and assessments after a stated period, was repealed and that this Plaintiff, through his representative in said Sovereign Camp, authorized the repeal of said Resolution passed in 1895 by the Sovereign Camp; whereby, he is now estopped from claiming any rights thereunder. And that the Plaintiff has acquiesced, through his representative, in the passage of the laws and resolutions of the Sovereign Camp with respect thereto, a copy of the constitution and by-laws of the Sovereign Camp enacted for the year 1899, being hereto attached, marked "Exhibit D" and made a part hereof.

Whereby, this Defendant states that the so-called "payments-to-cess" policies to what are known as "life-members" with respect to the exemption of members from payment of dues and assessments was repealed and the said Resolution has been of no force and effect since the repeal thereof on 1899. A copy of the last constitution and by-laws of the Order enacted in 1913, being hereto attached, marked "Exhibit 'E'" and made a part hereof. Whereby this Defendant states that, through the action of the Sovereign Camp, which was composed of delegates selected by the membership of the Order at the time the provision exempting any and all members from the payment of dues and as-

[fol. 121] assessments after a certain period of time was repealed and all members are and were required to pay all dues and assessments levied against them during life and while they continued members of this Order.

Defendant further answering, states that being fraternal and benevolent in its nature, it was organized without any pecuniary profit to the incorporators, officers or directors other than compensation for services rendered and the expenses incurred in behalf thereof; and that it has no capital stock, or resources, other than such property as may be acquired for its corporate and society purposes and a beneficiary fund created by assessments upon the entire membership during the lifetime of each member with which to pay death claims and a tombstone for each deceased member, the funds therefor to be replenished from time to time by the assessments as provided by the laws of the Order.

That the payment of beneficiary certificates has, at all times, been based upon one assessment of the entire beneficiary membership in good standing and the plan of assessment authorized by the Charter of the association and followed continuously since the organization of the Order has been and now is to levy upon all surviving members regular monthly assessments and such additional assessments as are or may be necessary to restore the beneficiary fund and to provide for the payment of death losses; and defendant says that the plan of issuing quarterly assessment calls upon all members for a sufficient amount to pay death claims during the previous three (3) months for life members who have [fol. 122] died during said time under the provision relating to life membership was never adopted nor carried out nor did the Sovereign Camp, or any of its officers, ever issue such quarterly assessment calls; for assessments have always been called monthly, or as often as required to pay death losses, upon all surviving members during the time that each remained a member of the Order and all of which was well known to the Plaintiff.

That plaintiff has always paid his assessments monthly and as often as necessary to restore the beneficiary fund to provide for the payment of death losses and has continuously acquiesced in said plan of assessment; whereby, he is now estopped from denying that said plan of assessments was the one authorized by the Charter, constitution and by-laws of the Order. And Defendant further states that Plain-

tiff has waived all rights, if any, he ever had to the plan of assessment stated in the life membership Resolution and the by-law hereinbefore referred to.

Further answering, Defendant states that at the time Plaintiff entered the Association no beneficiary or emergency fund had been created or provided for, except only assessments upon the entire membership to pay death losses as the same occurred and that the rate of such assessment was based solely upon payment by each member in good standing of assessments and calls as the same should be made from time to time to meet death losses and was based upon the continuance of such assessments during the entire life of each member while in good standing. And that no provision was made, whatsoever, either by the creation [fol. 123] of a fund or otherwise, to provide for payment of death losses upon the limited plan as contended for by Plaintiff and, in that regard, Defendant further states that the contribution rates to the beneficiary fund, in effect and paid by Plaintiff during the time of his membership, had been wholly inadequate as determined by Mortality statistics and by the experience of the Association to grant him, or any other member, exemption from the payment of dues and assessments at the expiration of a twenty year period; and that this Defendant states further that contributions to the beneficiary fund at the current rate of assessments are and during Plaintiff's life expectancy will be necessary to pay and to provide for the payment of current death losses.

Defendant further states that Plaintiff entered the Order at the age of 44 years, in March, 1895, and during the subsequent twenty (20) years has contributed monthly on his beneficiary certificate to the beneficiary fund, including the emergency fund hereinafter referred to, at the rate of \$1.45 from the time he entered to September, 1899; and at the rate of \$1.65 from October, 1899 to September, 1901; and at the rate of \$2.00 from October, 1901 to June, 1903; and from July, 1903, to June, 1909; at the rate of \$1.92; and from July, 1909, to March, 1915, at the rate of \$1.8275 and the average levied monthly rates of assessments contributed during the twenty year period being \$1.795. The average monthly rate being \$1.82.

[fol. 124] And, in that regard this answering Defendant states that the entire amount contributed by the Plaintiff to the beneficiary fund and the emergency fund hereinafter set

forth, amounts to the sum of Four Hundred Thirty-five and 62/100 (\$435.62) Dollars, which said amount was entirely inadequate to pay the cost of insurance to the Plaintiff during the twenty year period, if the insurance had ceased at the end of the said period.

And Defendant further states that, according to the Sovereign Camp of the Woodmen of the World Table of Mortality, based upon its experience of over twenty years and covering more than 1,200,000 lives exposed and according to other accepted Mortality Statistics, the net monthly level rate at the entry age of 44 years for a twenty year payment certificate of \$2,000.00 with dues and contributions to be discontinued and a paid-up certificate issued at the end of twenty years, would be the sum of \$5.10 per month and in addition thereto the sum of \$.25 per month for the monument benefit provided for in said certificate making a total of \$5.35; and that said level monthly rate would have provided for Plaintiff's just share of death losses accruing during said period and assured his beneficiary the payment of the said sum of Two Thousand (\$2,000.00) Dollars, together with the sum of \$100.00 for the erection of a monument at his grave, in the event that his death occurred during that period. But Defendant says that the rate which the Plaintiff should have paid for term protection for twenty years according to the Woodmen of the World Mortality experience would be \$2.34 per month for the \$2,000.00 certificate [fol. 125] and in addition thereto the sum of \$.11 per month for the monument benefit of \$100.00 promised in said certificate, making a total sum of \$2.45. Defendant further says the protection would cease at the end of twenty years under the said term rate of \$2.34; that plaintiff during the period aforesaid, in fact, paid for his protection only an average monthly assessment rate of \$1.82 which is less than it would have required for pure term protection during the said twenty year period.

Defendant further states that, according to said Mortality Experience Table and Statistics and according to accepted Mortality Statistics for whole life protection in the sum of \$2,000.00, together with an additional monument benefit of \$100.00 with contributions to the beneficiary fund to be discontinued at the end of twenty years and a paid-up certificate to be then issued, Plaintiff would have been required to pay during the said twenty year period an additional

monthly assessment of \$3.53, or a total of \$5.35 per month, which rate of contribution would have accumulated to the credit of Plaintiff's certificate at the expiration of twenty years a reserve deposit of \$1309.85, which amount would be necessary to purchase a paid-up certificate of \$2,000.00 together with an additional monument benefit of \$100.00 and would be required to be shown to the State Insurance Department as a reserve fund to offset the insurance liability on the \$2,100.00 twenty year paid-up certificate.

Whereby this Defendant states that Plaintiff has paid nothing toward an accumulation fund to carry his insurance [fol. 126] during life without payments at the end of the 20 year period and that no fund has been provided by the Order for the payment of such certificates, except only by an assessment upon the entire membership at the rates imposed by the Order.

And, in that regard, this Defendant further states that the rate paid by Plaintiff is the same as the rates paid by the other members of the Order, whose payments according to the certificates other than those of Plaintiff and the number referred to before herein, must be paid during the life of the member while in good standing.

Defendant further states that at a regular meeting of the Sovereign Camp, 1897, provision was made for the purpose of creating an Emergency Fund out of which to pay death losses in the event that the monthly assessment, or assessments, provided for were insufficient during any one year to pay the entire death losses, a copy of such Resolution, or By-law, being hereto attached, marked Exhibit "F" and made a part hereof. And, at a later regular meeting of the Sovereign Camp, 1899, the said provision was amended and changed, a copy of said amendment being set forth in Exhibit "D." That Plaintiff has contributed to the said Emergency Fund altogether the sum of Thirty-nine and 31/100 (\$39.31) Dollars. Further answering Defendant states that the original plan of organization and business upon which the Charter was granted by the State was purely mutual and the business of Defendant, since its organization, [fol. 127] has been conducted upon a mutual basis; that up to the passage of the Resolution with respect to the so-called "Payment-to-cess" policies, the number of outstanding beneficiary certificates in the Order comprised approximately 4,450 with insurance benefits amounting to the sum of

Nine Million Nine Hundred Seventy-eight Thousand Five Hundred (\$9,978,500.00) Dollars; that all of said certificates have been issued upon the plan of payment of assessments to meet death losses during the entire life of the member while in good standing. That since 1893 to 1898, during the period when the so-called "payment-to-cess" policies were issued, there were issued of such class 33,965 outstanding certificates; with insurance benefits aggregating the sum of Sixty-three Million Nine Hundred Seventy-eight Thousand (\$63,978,000.00) Dollars. That since 1898 to the first of March, 1915, there are outstanding over 720,000 policies, with insurance benefits aggregating the amount of over \$980,000,000.00 and that all of said latter policies are based upon the plan of assessments to be paid to meet death losses during the life of each member while in good standing.

Whereby this Defendant states that, if the plaintiff and others holding similar certificates should be permitted to continue said insurance certificates in force without the payment of assessment after the expiration of twenty years, it would result that the other members of said Order who did not hold such certificates would be compelled to pay the [fol. 128] death losses for the members holding so-called "payments-to-cess" policies, which would result in an injustice to the membership not holding such certificates; and, in that regard, this Defendant states that the rates of assessments have been alike to all members whether such members held the so-called "payments-to-cess" policies or not.

Wherefore, Defendant prays that said suit be dismissed at Plaintiff's costs, the relief asked for therein be denied and that Defendant recover his costs expended herein.

A. H. Burnett and McGilton, Gaines & Smith, Attorneys for Defendant.

Duly sworn to by F. H. Gaines. Jurat omitted in printing.

(Exhibits attached.)

Endorsed: 143-284 in the District Court of Douglas Co. Neb. Prince L. Trapp Plaintiff vs. Sovereign Camp of the Woodmen of the World Defendant. Answer. Clerks Fees [fol. 129] \$2.50. Paid by McG. G. & S. A. H. Burnett and F. H. Gaines, Attorneys for Defendant. Filed in District Court Douglas County, Nebr. Jun. 23, 1916. Robert Smith, Clerk.

Afterward, on the 20th day of November, 1916, Nunc pro tunc as of July 19, 1916 a Reply was filed herein, which said Reply is in the words and figures following, to-wit:

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA.

PRINCE L. TRAPP, Plaintiff

vs.

SOVEREIGN CAMP OF THE WOODMEN OF THE WORLD, a Corporation, Defendant

REPLY

Comes now the plaintiff, and for reply to the answer of the defendant, filed herein, alleges:

As to paragraph 4 of said answer, this plaintiff is without information upon which to form a belief, and therefore denies the same as to the number of certificates issued by the defendant company, as set forth therein, and asks in regard to the number and amount that the defendant be required to make strict proof thereof.

Further answering, this plaintiff denies each and every allegation in paragraphs 6, 7, 8, 9, 10, 11 and 12 in said answer contained.

Plaintiff admits that he signed the application, Exhibit "C," as attached to defendant's answer and alleges that by reason of the acts of the deft it is forever estopped from denying the validity of its contract with this plff.

[fol. 130] Wherefore, plaintiff prays judgment as prayed in his petition on file herein.

Vinsonhaler, McGuckin & Caldwell, Attorneys for Plaintiff.

Duly sworn to by Duncan M. Vinsonhaler. Jurat omitted in printing.

Endorsed: Doc. 143 No. 284. In the District Court of Douglas County, Nebraska. Prince L. Trapp Plaintiff vs. Sovereign Camp of the Woodmen of the World, a corporation, Defendant. Reply. Clerks Fees 50¢. Paid by Vinsonhaler, McGuckin & Caldwell Attorneys for Plaintiff. Filed in District Court Douglas County, Nebraska Nov. 20 1916 nunc Pro tunc July 19, 1916, Robert Smith, Clerk.

At the September term of said Court, and on the 30th day of October, 1916, a Decree was rendered herein, as [fol. 131] appears on Page 563 Journal 155 as follows, to-wit:

143-284

PRINCE L. TRAPP, Plaintiff,

VS.

SOVEREIGN CAMP, WOODMEN OF THE WORLD, Defendant

DECREE

This cause coming on to be heard upon the petition of the plaintiff, the answer of defendant and reply thereto and the evidence, and being submitted to the Court after argument, the Court finds for the defendant and against the plaintiff.

It is therefore, ordered, adjudged and decreed that the said petition of the plaintiff be dismissed with prejudice, at plaintiff's costs, and that defendant have judgment against the plaintiff for its costs herein expended, taxed at — Dollars, to all of which findings and decree the plaintiff excepts and is allowed forty days from the rising of the Court to prepare and serve a bill of exceptions.

October 30th, 1916.

By the Court, Geo. A. Day, Judge.

Afterward, at the September term of said Court, and on the 20th day of November, 1916, an Order was entered herein, as appears on Page 601 Journal 155, as follows, to-wit:

[fol. 132]

143-284

PRINCE L. TRAPP, Plaintiff,

VS.

SOVEREIGN CAMP OF THE WOODMEN OF THE WORLD, a Corporation, Defendant

ORDER, RE REPLY

It being made to appear to the Court that through inadvertence the reply to the answer of the defendant in this

case was not filed and that same was used in the trial of the case, now on motion therefor, it is ordered by the Court that Plaintiff be, and hereby is, given leave to file said reply Nunc Pro Tunc as of July 19th, 1916.

By the Court, Geo. A. Day, Judge.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 133] And afterwards, to-wit, on the nineteenth day of February, 1918, the following among other proceedings were had and done in said Supreme Court of Nebraska, to-wit:

SUPREME COURT OF NEBRASKA, JANUARY TERM, A. D. 1918

Feb. 19

The following causes were argued by counsel and submitted to the Court:

No. 19940. Trapp vs. Sovereign Camp, Woodmen of the World. Appeal from Douglas County

And afterwards, to-wit, on the thirtieth day of March, 1918, there was rendered by said Supreme Court of Nebraska and entered of record upon Journal FF thereof, at page 414, a certain Order in the words and figures following, to-wit:

[fol. 134] SUPREME COURT OF NEBRASKA, JANUARY TERM, A. D. 1918

No. 19940

March 30

PRINCE L. TRAPP, Appellant

vs.

SOVEREIGN CAMP, WOODMEN OF THE WORLD, Appellee,

Appeal from the District Court of Douglas County

Reargument herein is ordered by the court at the session commencing May 6, 1918.

A. M. Morrissey, Chief Justice.

And afterwards, to-wit, on the tenth day of May, 1918, the following among other proceedings were had and done in said Supreme Court of Nebraska, to-wit:

SUPREME COURT OF NEBRASKA, JANUARY TERM, A. D. 1918

May 10

The following causes were argued by counsel and submitted to the Court:

No. 19940. Trapp vs. Sovereign Camp, Woodmen of the World. Appeal from Douglas County

And afterwards, to-wit, on the fifteenth day of June, 1918, there was rendered by said Supreme Court of Nebraska, and entered of record upon Journal FF thereof, at page 570, a certain Judgment in the words and figures following, to-wit:

[fol. 135] SUPREME COURT OF NEBRASKA, JANUARY TERM, A. D. 1918

No. 19940

June 15

PRINCE L. TRAPP, Appellant,

vs.

SOVEREIGN CAMP, WOODMEN OF THE WORLD, Appellee

Appeal from the District Court of Douglas County

JUDGMENT

This cause coming on to be heard upon appeal from the district court of Douglas county, was argued by counsel and submitted to the court; upon due consideration whereof, the court finds no error apparent in the record of the proceedings and judgment of said district court. It is therefore, ordered and adjudged that said judgment of the district court be, and the same hereby is, affirmed at the costs of appellant, taxed at \$—; for all of which execution is hereby awarded, and that a mandate issue accordingly.

Opinion by Morrissey, C. J.

A. M. Morrissey, Chief Justice.

And on the same day there was filed in the office of the Clerk of said Supreme Court of Nebraska a certain Opinion by said Court, pursuant to which the preceding judgment was entered, which Opinion is in words and figures following, to wit:

TRAPP.

VS.

SOVEREIGN CAMP, W. O. W.

No. 19940

Opinion Filed June 15, 1918

OPINION

The determination of this case is controlled by the rule laid down in Haner v. Grand Lodge A. O. U. W., No. 20280, decided June 15, 1918.

MORRISSEY, C. J.:

[fol. 136] This is an action in equity brought by plaintiff to compel defendant, a fraternal beneficiary society, to issue and deliver to him a paid up policy in the sum of \$2,000, under the provisions of a by-law of defendant in force at the time the plaintiff became a member of the society. The by-law provided that every person joining the society, after reaching the age of 42 years and remaining a member thereof in good standing for a term of 20 years "shall not thereafter be required to pay any assessment or dues and shall receive a paid up certificate, payable at death to his designated beneficiary."

The judgment for defendant and plaintiff appeals.

It is admitted that plaintiff fell within the class specified and remained a member in good standing for the period mentioned, but the answer alleges that defendant was organized under the laws of the state of Nebraska; that under its articles of incorporation it was authorized to create a fund from which there should be paid upon the death of a member the proceeds of one assessment upon the surviving members, not exceeding the amount designated in his beneficiary certificate; that defendant had the right to issue beneficiary certificates to its members, the amount thereof to be paid upon the death of a member, but had no right or power

to issue any other kind or class of certificate, and that the society never had the right, under the law, to issue a paid up certificate; and that the by-law relied upon is ultra vires. [fol. 137] There are other allegations in the answer but it is unnecessary to set them out.

The main questions presented have been determined adversely to plaintiff in the case of Haner v. Grand Lodge A. O. U. W., No. 20280, decided June 15, 1918, and on the authority thereof the judgment of the district court is

Affirmed.

And afterwards, to-wit, on the fifth day of October, 1918, there was rendered by said Supreme Court of Nebraska and entered of record upon Journal GG thereof, at page 28, a certain Order in the words and figures following, to-wit:

SUPREME COURT OF NEBRASKA, SEPTEMBER TERM, A. D. 1918

No. 19940

Oct. 5

PRINCE L. TRAPP, Appellant,

VS.

SOVEREIGN CAMP, WOODMEN OF THE WORLD, Appellee

Appeal from the District Court of Douglas County.

ORDER DENYING REHEARING

This cause coming on to be heard upon motion of appellant for a rehearing herein, was submitted to the court; upon due consideration whereof, the court finds no probable error in the judgment of this court heretofore entered herein. It is, therefore, ordered and adjudged that said motion for rehearing be, and same hereby is, overruled and a rehearing herein denied.

A. M. Morrissey, Chief Justice.

[fol. 138] Certificates of Clerk and Chief Justice to foregoing transcript omitted in printing.

[fol. 139] The above and foregoing is all the evidence introduced on said hearing of the above-entitled cause by the respective parties thereto, plaintiffs and defendant.

And Thereafter, To-wit: On the 1st day of May, A. D. 1934, the same being the 8th day of the regular April, 1934, Term of the aforesaid Circuit Court, the above-entitled cause coming on for further hearing, before the Court, sitting as a jury, the defendant therein requested the Court [fol. 140] to make, for and on its behalf, the seven following declarations of law, which the Court refused to give:

IN CIRCUIT COURT OF NODAWAY COUNTY

[Title omitted]

DEFENDANT'S REQUESTED DECLARATIONS OF LAW

Instruction A

The Court declares the law to be that under the pleadings and the evidence adduced the finding and judgment must be for the Defendant.

Refused.

Instruction B

The Court declares the law to be that the policy, sued on in this case, being issued on the application of the insured, and issued by the Sovereign Camp at the head office in Omaha, Nebraska, is a Nebraska contract.

Refused.

Instruction C

The Court declares the law to be that the Sovereign Camp, W. O. W., being a Nebraska corporation, its authority is to be determined by the laws of Nebraska, and it can exercise no authority unless the same was delegated to it by the laws of that state and the Articles of Incorporation issued to it thereunder. And in determining its authority the laws of Nebraska and the construction placed upon those laws by the courts of Nebraska are controlling on this court.

Refused.

[fol. 141]

Instruction D

The Court declares the law to be that, under Section 1 of Article IV of the Constitution of the United States, full faith and credit must be given to the decision of the Su-

preme Court of Nebraska in the case of Trapp v. Sovereign Camp. W. O. W., 102 Nebr. 652, 168 N. W. 191, and in accordance therewith must hold that the clause in the policy sued on, which provided "payments to cease after 20 years," was ultra vires and void and was and is of no force or effect, and did not relieve the Plaintiff from the necessity of paying the regular dues and assessments provided for and required to be paid by the Constitution, rules and by-laws of the Association.

Refused.

Instruction E

The Court declares the law to be that the application, the policy issued to the applicant, the constitution, laws and by-laws existing at the time of the issuing of the policy were all a part of the contract and that the agreement of Pleasant Bolin to be bound by any subsequent changes in the constitution, laws and by-laws was a valid and binding agreement; that the repeal of Section 82, constitution, laws and by-laws of 1895, was binding on the said Pleasant Bolin and that he was bound by the constitution, laws and by-laws as thus modified and required to make the payments in accordance with such modified constitution, laws and by-laws, notwithstanding the "payments to cease" clause that [fol. 142] was contained in the policy issued to the said Pleasant Bolin.

Refused. 0

Instruction F

The Court declares the law to be that the constitution, laws, and by-laws introduced in evidence required the insured, Pleasant Bolin, to make certain payments to the Clerk of his Camp, and provided, in effect, that failure to make such payments would automatically and without any action on the part of the Association, result in his suspension. The Court further declares the law to be that under the constitution, laws, and by-laws, as modified subsequent to the issuance of the policy sued on, he was required to continue such payments during his life. The Court declares the law to be that such modification was binding on the said Pleasant Bolin, notwithstanding the "payments to cease" clause in his policy and that his failure to make such payments

caused his suspension and he was not in good standing thereafter and his policy was void.

Refused.

Instruction G

The Court declares the law to be that under the pleadings and the evidence the defendant is a fraternal beneficiary association and is governed by the laws applying to such societies and is not governed by the laws applying to insurance companies.

Refused.

[fol. 143] To which action of the Court in refusing to make the seven foregoing declarations of law, and each of them, for and on behalf of the defendant, as so requested to do, the defendant then and there at the time excepted, and still excepts.

And Thereafter, on said 1st day of May, A. D. 1934, the same being the 18th day of the regular April, 1934, term of the aforesaid circuit court, the above-entitled cause coming on for further hearing before the Court, sitting as a jury, the Court, having heard the evidence in full, made and entered of record the following finding in the above-entitled cause.

IN CIRCUIT COURT OF NODAWAY COUNTY

[Title omitted]

FINDING OF COURT

Now on this 13th day of April, 1934, the same being the 4th day of the regular April, 1934, Term of the Circuit Court of Nodaway County, Missouri, this cause coming on for trial, come now the parties, plaintiffs and defendant by their respective counsel, and announce ready for trial, and the following duly qualified jurors were duly sworn to try said cause, to-wit: Henry Hanse, John Rush, William Wells, Bernis McNeal, Pete Pfeifer, Ed L. Dryden, Clifford Brown, John Boyer, Dale Partridge, J. N. Murray, [fol. 144] Harry Lett and Earl Brittain; and thereafter on said day, by agreement of the parties, plaintiffs and de-

defendant and the consent of the court, and after the evidence had been partially heard by said jury, said jury was discharged and said cause, by agreement, submitted to the court for trial and the court, after having heard additional evidence and having heard the evidence in full and having duly considered the same, did, on the 1st day of May, 1934, the same being the 18th day of the regular April, 1934, Term of said Circuit Court, find the issues in said cause for plaintiffs, and that plaintiffs are entitled to recover of and from said defendant on the policy or certificate of insurance sued on and introduced in evidence in the sum of Eleven Hundred (\$1100.00) Dollars, and that said defendant is indebted to plaintiffs in said sum past due and unpaid, on account of said insurance.

Wherefore, It is by the court ordered and adjudged that plaintiffs have and recover of and from said defendant said debt in the sum of Eleven Hundred (\$1100.00) Dollars, together with their costs taxed in this cause, and that plaintiff have execution.

To which action of the Court in finding the issues for and on behalf of the plaintiffs, the defendant then and there at the time excepted, and still excepts.

And Thereafter, To-wit: On said first day of May, A. D. 1934, the same being the eighteenth day of the regular April, 1934, Term of the aforesaid circuit court, and within four [fol. 145] days after the finding made by the Court as hereinabove set out, the defendant filed its Motion for a Rehearing and New Trial of the above-entitled cause.

IN CIRCUIT COURT OF NODAWAY COUNTY

[Title omitted]

MOTION FOR REHEARING AND NEW TRIAL

Comes now the Defendant and moves the Court to set aside the finding and judgment in this cause and grant a new trial herein, and for reason therefor states:

1st. The Court erred in finding for the Plaintiffs.

2nd. The Court erred in holding that the policy sued on and all provisions in said policy were valid and binding.

3rd. The Court erred in holding that the "payment to cease after 20 years" clause in the policy sued on was valid and binding.

4th. The Court erred in holding that the decision of the Supreme Court of Nebraska, in the case of Trapp v. Sovereign Camp, W. O. W., 102 Nebr. 562, was not controlling on this Court.

5th. The Court erred in denying full faith and credit to the decision of the Supreme Court of Nebraska, in the case of Trapp v. Sovereign Camp, W. O. W., 102 Nebr. 562, as [fol. 146] required by Section 1, Article IV of the Constitution of the United States.

6th. The Court erred in refusing the declaration of law, No. "A," offered by the Defendant and refused by the Court.

7th. The Court erred in refusing the declaration of law No. "B," offered by the Defendant, and refused by the Court.

8th. The Court erred in refusing the declaration of law No. "C," offered by the Defendant and refused by the Court.

9th. The Court erred in refusing the declaration of law No. "D," offered by the Defendant and refused by the Court.

10th. The Court erred in refusing the declaration of law No. "E" offered by the defendant and refused by the Court.

11th. The Court erred in refusing the declaration of Law No. "F," offered by the Defendant and refused by the Court.

12th. The Court erred in refusing the declaration of Law No. "G," offered by the Defendant and refused by the Court.

13th. The Court erred in holding that under the Articles of Incorporation of the Defendant, the Defendant could issue policies of the kind and character sued on and that the same would be valid and binding on the issuing corporation.

14th. The Court erred in holding that Section 82 of the Constitution, laws and by-laws of the Sovereign Camp, W. O. W. of 1895, was a valid and binding law of the

[fol. 147] Association and that contracts issued under it were valid and binding agreements in their entirety.

15th. The Court erred in holding that Section 68, Constitution, laws and by-laws of the Sovereign Camp W. O. W. of 1897, was valid and that policies issued in accordance therewith were binding contracts.

16th. The Court erred in holding that the policy sued on was a Missouri contract and that said policy was controlled by and must be construed in accordance with the laws of the State of Missouri.

17th. The Court erred in holding that the Association could not amend its Constitution, laws and by-laws, subsequent to the issuing of the Certificate of Insurance sued on so as to eliminate the "payment to cease after twenty years" cause and require payments to be made during the life of the insured.

Wright & Ford, Attys. for Defendant.

ORDER OVERRULING MOTION FOR NEW TRIAL

And Thereafter, on the 28th day of May, A. D. 1934, the same being the nineteenth day of the regular April, 1934, Term of the aforesaid Circuit Court, the above-entitled cause coming on for further hearing on Defendant's Motion for a Rehearing and New Trial thereof, the Court, having heard and fully considered said Motion, overruled the same.

To which action of the Court in overruling said Motion for Rehearing and New Trial, the Defendant, then and [fol. 148] there at the time excepted and still excepts.

JUDGMENT ON FINDING

And Thereafter, To-wit: On the 28th day of May, A. D. 1934, the same being the nineteenth day of the regular April, 1934, Term of the aforesaid Circuit Court, the above-entitled cause coming on for further hearing, the Court, by proper entry of record, rendered judgment on its finding heretofore made in said cause, all as more fully appears by the record proper in said cause.

And Thereafter, To-wit: On the 28th day of May, A. D. 1934, the same being the nineteenth day of the regular April, 1934, Term of the aforesaid Circuit Court, the above-entitled cause coming on for further hearing, the Defendant therein prayed the Court to grant it an appeal from the said finding and judgment of the aforesaid Circuit Court in the above-entitled cause to the Supreme Court of the State of Missouri, and at said time filed its affidavit therefor.

Which said Affidavit for Appeal, filed by the Defendant as above set forth, is in words and figures as follows, to-wit:

IN CIRCUIT COURT OF NODAWAY COUNTY

[Title omitted]

AFFIDAVIT FOR APPEAL

The Defendant, Sovereign Camp of the Woodmen of the World, by its duly authorized Agent, M. E. Ford, prays an [fol. 149] appeal herein and the said M. E. Ford, as such agent of and for Defendant, being duly sworn, states that he is the Agent of Appellant for the purpose of taking an appeal herein, and further says, on oath, that said appeal in the above-entitled cause is not made for vexation or delay, but because the affiant and appellant believe that the said appellants are aggrieved by the judgment and decision of the above-named court in said cause.

M. E. Ford.

Subscribed and sworn to before me this 28th day of May, 1934.

W. R. Tilson, Clerk.

ORDER ALLOWING APPEAL

And Therefore, To-wit: On the 28th day of May, A. D. 1934, the same being the nineteenth day of the regular April, 1934, Term of the aforesaid Circuit Court, the above-entitled cause coming on for further hearing on Defendant's Prayer for Appeal, together with its affidavit therefor, the Court, having heard and fully considered said prayer for Appeal, granted to Defendant an appeal from the aforesaid finding and judgment of the aforesaid Circuit Court to the Supreme Court of the State of Missouri.

The Court, at said time, granted Defendant leave to file its Bill of Exceptions before or during the next regular term of the aforesaid Circuit Court.

ORDER SETTLING BILL OF EXCEPTIONS

STATE OF MISSOURI,

County of Nodaway, ss:

And Inasmuch As The matters and things hereinabove set forth do not appear of record in this cause, the Defendant [fol. 150] and herein presents this, its Bill of Exceptions, within the time limited by its Court, to me, the undersigned Judge, and prays that the same be signed, sealed and made a part of the record in the above-entitled cause, which is accordingly done this 6th day of July, A. D. 1936.

Thomas A. Cummins, Judge of the Fourth Judicial Circuit of Missouri and Ex-Officio Judge of the Circuit Court Within and for the County of Nodaway, in the State of Missouri.

The above and foregoing Bill of Exceptions approved.

Dated this 6th day of July, A. D. 1936.

Shinabargar, Blagg, Livengood & Weightman, and
A. F. Harvey, Attys. for Plaintiffs.

[fol. 151]

ASSIGNMENT OF ERRORS

1

The court erred in finding for the plaintiffs.

2

The court erred in refusing the declaration of law No. C, offered by defendant and refused by the court over the objection and exception of defendant. (Said declaration was as follows: *

"The court declares the law to be that the Sovereign Camp, W. O. W., being a Nebraska corporation, its authority is to be determined by the laws of Nebraska, and it can exercise no authority unless the same was delegated to it by the laws of that state and the Articles of Incorporation.

ration issued to it thereunder. And in determining its authority the laws of Nebraska and the construction placed upon those laws by the courts of Nebraska are controlling on this court.")

3

The court erred in refusing the declaration of law No. D, offered by defendant and refused by the court over the objection and exception of defendant. (Said declaration was as follows:

"The court declares the law to be that, under Section 1 of Article IV of the Constitution of the United States, full faith and credit must be given to the decision of the Supreme Court of Nebraska in the case of Trapp v. Sovereign Camp, W. O. W., 102 Nebr. 562, 168 N. W. 191, and in accordance [fol. 152] therewith must hold that the clause in the policy sued on, which provides 'payments to cease after 20 years,' was *ultra vires* and void and was and is of no force, or effect, and did not relieve the plaintiff from the necessity of paying the regular dues and assessments provided for and required to be paid by the constitution, rules and by-laws of the association.")

4

The court erred in refusing the declaration of law No. E, offered by defendant and refused by the court over the objection and exception of defendant. (Said declaration was as follows:

"The court declares the law to be that the application, the policy issued to the applicant, the constitution, laws and by-laws existing at the time of the issuing of the policy were all a part of the contract and that the agreement of Pleasant Bolin to be bound by any subsequent changes in the constitution, laws and by-laws was a valid and binding agreement; that the repeal of Section 82, constitution, laws and by-laws of 1895, was binding on the said Pleasant Bolin and that he was bound by the constitution, laws and by-laws as thus modified and required to make the payments in accordance with such modified constitution, laws and by-laws, notwithstanding the 'payments to cease' clause that was contained in the policy issued to the said Pleasant Bolin.")

The court erred in refusing the declaration of law No. F, offered by defendant and refused by the court over the objection and exception of defendant. (Said declaration being as follows:

[fol. 153] "The court declares the law to be that the constitution, laws and by-laws introduced in evidence required the insured, Pleasant Bolin, to make certain payments to the Clerk of his Camp, and provided in effect, that failure to make such payments would automatically and without any action on the part of the association, result in his suspension. The court further declares the law to be that under the constitution, laws and by-laws, as modified subsequent to the issuance of the policy sued on, he was required to continue such payments during his life. The court declares the law to be that such modification was binding on the said Pleasant Bolin, notwithstanding the 'payments to cease' clause in his policy and that his failure to make such payments caused his suspension and he was not in good standing thereafter and his policy was void.")

[fol. 154]

POINTS AND AUTHORITIES

I

The defendant, being a Nebraska corporation, derives its authority from the laws of Nebraska and can exercise only such powers as were given to it by its Articles of Incorporation.

Supreme Council Royal Arcanum v. Greene, 237 U. S. 531.

Modern Woodmen v. Mixer, 267 U. S. 544.

II

The Laws of Nebraska, the Articles of Incorporation and the By-Laws of the Order are all a part of the contract between the Society and a member of the Order.

Reynolds v. Royal Arcanum, 192 Mass. 150.

Supreme Council Royal Arcanum v. Greene, 237 U. S. 531.

III

An invalid law constitutes no part of the contract and no rights can be acquired under it. Its repeal, therefore, deprives a person of no rights that he possessed before the repeal.

Cobble v. Royal Neighbors of America, 236 S. W. 306.

IV

In determining whether or not the defendant could issue a paid-up certificate, the laws of Nebraska and the construction placed upon those laws by the Supreme Court of that [fol. 155] state, are controlling, it being a Nebraska corporation.

Hartford Life Ins. Co. v. Ibs, 237 U. S. 662.

Supreme Council Royal Arcanum v. Greene, 237 U. S. 531.

Reynolds v. Supreme Council Royal Arcanum, 192 Mass. 150.

V

The Supreme Court of Nebraska has ruled that the defendant had no right or authority to issue paid-up certificates and that the by-law attempting to confer that power upon the Sovereign Camp of the Woodmen of the World, was ultra vires the corporation and void.

Trapp v. Sovereign Camp, W. O. W., 102 Nebr. 562, 168 N. W. 191.

Haner v. Grand Lodge A. O. U. W., 102 Nebr. 563, 168 N. W. 189.

VI

The fund from which this certificate must be paid, if it is to be paid at all, is made up of assessments made on thousands of members residing in different states. The interest of these members in this fund is common and their right thereto mutual, and all derived from the laws of Nebraska. Their interests therein and their rights thereto must, therefore, be determined by the law of Nebraska.

Hartford Life Ins. Co. v. Ibs, 237 U. S. 662.

Modern Woodmen v. Mixer, 267 U. S. 544.

[fol. 156] Reynolds v. Royal Arcanum, 192 Mass. 150.

VII

The decisions of the Supreme Court of Nebraska, holding Section 82 of the By-Laws of 1895, the same being Section 68 of the By-Laws of 1897 of the Sovereign Camp of the Woodmen of the World, ultra vires the corporation and void ab initio and that said corporation had no right to issue paid-up certificates are binding on the courts of this state.

Supreme Council Royal Arcanum v. Greene, 237 U. S. 531.

Modern Woodmen, W. O. W., v. Mixer, 267 U. S. 544.

Carretson v. Sovereign Camp, W. O. W., 210 Mo. App. 539.

Sovereign Camp, W. O. W., v. Wirtz, 254 S. W. 637.

VIII

The defendant, being a fraternal beneficiary association, the members thereof do not stand in the same relation to the association as do the holders of policies in a standard life insurance company. Every member of a fraternal society occupies the dual position of insurer and insured. The acts of such an association are the individual acts of each of the members thereof.

Biggs v. Modern Woodmen, W. O. W., 82 S. W. (2d) 898.

Haner v. Grand Lodge, A. O. U. W., 102 Nebr. 563, 168 N. W. 189.

Hartford Life Ins. Co. v. Ibs, 237 U. S. 662.

[fol. 157] Stark v. Sovereign Camp, W. O. W., 225 S. W. 1063.

Corey v. Sherman, 96 Ia. 115, 64 N. W. 828.

Carlton v. So. Mo. Ins. Co., 72 Ga. 371.

IX

A fraternal beneficiary society and particularly the Woodmen of the World acts through representatives of the members and, therefore, the acts of the society are the acts of each individual member. Each member is present and taking part in the proceedings either in person or through his chosen representative and is presumed, therefore, to have knowledge of the action taken, and is bound thereby.

Stark v. Sovereign Camp, W. O. W., 225 S. W. 1063.

Corey v. Sherman, 96 Ia. 115, 64 N. W. 828, 32 L. R. A. 490.

X

In determining this case in favor or the plaintiff, the court was guided largely by the decision of the Kansas City Court of Appeals in the case of *Neff v. Sovereign Camp, W. O. W.*, 48 S. W. (2d) 570. There is nothing in the case of *Neff v. Sovereign Camp* that is contrary to the above principles of law, nor is it decisive of the case at bar. The court erred in assuming that the facts in the two cases were similar and that the trial court was bound to follow the *Neff* decision.

[fol. 158]

ARGUMENT

The facts in this case are simple and, we believe, undisputed. The sole question is whether or not Pleasant Bolin was entitled to a paid-up certificate at the end of twenty years. If he was, then the plaintiffs should recover. If he was not, then the defendant should prevail. It is a pure question of law, as we see it.

There certainly can be no moral obligation on the society to pay this demand. The by-law, under which this certificate was issued was abandoned in 1897 and repealed in 1899. All members, therefore, who became members of the society after 1896 were paying the same assessments into the beneficiary fund during all the years that followed that were being paid by Pleasant Bolin and those members who had become members prior to 1897. Therefore, those who joined the society a few months after Pleasant Bolin became a member and who lived until 1933 and remained in good standing, were paying the regular monthly assessment during all that time and yet entitled to no greater benefit than was Pleasant Bolin, who ceased to pay in July, 1916. Yet Pleasant Bolin claims that he is entitled to the same benefits as those who continued to pay. In other words, his heirs assert that by reason of the fact that Pleasant Bolin, from 1896 to 1916, paid into the beneficiary fund the sum of \$302.65, that they now have the right to draw out of said fund, the sum of \$1,100.00. In a mutual insurance society, [fol. 159] the members insure each other. But the heirs of Pleasant Bolin are claiming, in this suit, that others continued to insure Pleasant Bolin for about 17 years after he ceased to insure them. The Supreme Court of Nebraska has held that members holding these "Payment to cease" cer-

tificates have no right to enforce such a demand and that the by-law, under which they seek to do so, is void. Thus it will be seen that plaintiffs seek to recover under a by-law, which is not only ultra vires and void but unjust, inequitable and discriminating.

Turning now to the legal features of the case, we have this situation. The Supreme Court of the State of Nebraska, the domicile of the corporation, has declared the by-law, in question, invalid and ultra vires the corporation. It has further declared that the society had no right to issue paid-up certificates and that the "payments to cease after twenty years" clause was void and that no recovery can be had thereunder. That being so, if the law of Nebraska governs this case, then the plaintiffs cannot recover. The first question, therefore, is whether or not this court is bound by the rulings of the Supreme Court of Nebraska. The law on this point is so well settled and so universally recognized that it would hardly be worth while to discuss the question were it not that the Kansas City Court of Appeals seems to cast some doubt on it by its ruling in the case of *Neff v. Sovereign Camp, W. O. W.*, 48 S. W. (2d) 570. Yet the learned judge who delivered the opinion of the court in the *Neff* case concedes that the law of Nebraska is controlling, for he says:

[fol. 160] "The question of whether or not the act of the society was ultra vires would seem to depend upon the Nebraska statutes, creating the society and giving it the power it was authorized to exercise and then upon the Nebraska decisions construing that statute."

That the above paragraph is a correct statement of the legal principle involved, there can be no question. Indeed it would be monstrous if it were otherwise. Take the case decided by the Supreme Court of Nebraska and the one at bar for illustration. Prince L. Trapp, a resident of Nodaway County, Missouri, became a member of defendant society in 1895 and took out a certificate of the same kind and character as that issued to Pleasant Bolin. He was not a member of the same lodge, but was a member of a lodge just a few miles away. Pleasant Bolin being a member of the lodge at Arkoe in Nodaway County, Missouri, and Prince L. Trapp being a member of the lodge located at Graham, Nodaway County, Missouri, and Pleasant Bolin received

his certificate just a few months after the one issued to Prince L. Trapp. Therefore, in legal effect, the two cases are identical. Both are asserting the same rights and both are entitled to the same consideration by the society. The Supreme Court of Nebraska has denied Prince L. Trapp relief. *Trapp v. Sovereign Camp*, 168 N. W. 191. Will the Supreme Court of Missouri grant the relief to the heirs of Pleasant Bolin that the Supreme Court of Nebraska has denied to Prince L. Trapp? If it does, it will be to extend an implied invitation to all holders of such policies to appeal [fol. 161] to the courts of Missouri for that relief, which no other court would grant and to which other courts have held such policy holders are not entitled. Not only that but it will be to deny to the acts of the Supreme Court of Nebraska that full faith and credit which the Constitution of the United States says it shall have and will do this in the face of the holding of the Supreme Court of the United States.

In the case of *Hartford Life Ins. Co. v. Ibs*, 237 U. S. 662, the Supreme Court of the United States said:

"The fund was single, but having been made up of contributions from thousands of members, their interest was common. It would have been destructive of their mutual rights in the plan of mutual insurance to use the mortuary fund in one way for claims of members residing in one state, and to use it in another way as to claims of members residing in a different state."

Again in *Modern Woodmen v. Mixer*, 267 U. S. 544, the Supreme Court of the United States said:

"The act of becoming a member is something more than a contract, it is entering into a complex and abiding relation, and as marriage looks to domicile, membership looks to and must be governed by the law of the state granting the incorporation. We need not consider what other states may do, but we deem it established that they cannot attach to membership rights against the company that are refused by the law of the domicile. It does not matter that a member joined in another state."

[fol. 162] At the risk of becoming tedious, we desire to consider the *Neff* case (*Neff v. Sovereign Camp of the Woodmen of the World*, 48 S. W. (2d) 570) a little further

in support of our contention that it is not decisive of the case at bar. That case was ruled on the question of estoppel and the court distinguished between the Neff case and the Garretson (*Garretson v. Sovereign Camp, W. O. W.*, 210 Mo. App. 539). The Springfield Court of Appeals, in determining the Garretson case said that there was no estoppel and the Kansas City Court of Appeals by implications approves that holding.

In speaking of the Trapp case (*Trapp v. Sov. Camp, W. O. W.*, 102 Nebr. 562, 168 N. W. 191) the Kansas City Court of Appeals in the Neff case, said:

"The defendant pleaded ultra vires, but there was no pleading of estoppel to make that defense, or if so, no facts appeared which would create an estoppel."

The court was in error in saying there was no plea of estoppel in the Trapp case (see Abstract pp. 136-137). Perhaps, the record in the Trapp case was not before the court in the Neff case. Whether there was a plea of estoppel in the Haner case or not, the court gave the question serious consideration, for the court said:

"It is argued that the association is estopped to deny the validity of this section of the by-laws. The association was operating under the statute at the time plaintiff became a member. Plaintiff, as a member of the association, was a party to the adoption of this by-law. He does not stand in the same relation to the association as does the holder of [fol. 163] a policy in a standard life insurance company, but occupies the dual position of insurer and insured. The association could not directly write a contract for this class of insurance and the law will not permit the association to evade the statute (22 Cyc. 41). The holdings seem to be that a fraternal society may waive its own by-laws or any of the provisions made for its management, but it cannot waive the provisions of the statutes made for its government."

If there was no estoppel in the Garretson case or the Trapp case or the Haner case, then there certainly is no estoppel in the case at bar. The facts in the Trapp case, so far as the principles of law are concerned, are identical with the facts in the Bolin case. It is clear that the Kansas City Court of Appeals does not dissent from the ruling of the Spring-

field Court of Appeals in the ²⁷¹Garretson case or from the Supreme Court of Nebraska in the Trapp case or the Haner case, but, by implication at least, approves all three. As the facts in the case at bar bring it within the rules governing in the Garretson, Trapp and Haner cases and distinguishes it from the Neff case, it should be governed by those cases and not by the Neff case.

In the Neff case, the court levels many criticisms at the pleadings and evidence. In the course of the opinion, the court in the Neff case, says:

"Defendant also set up in its answer that the Sovereign Camp . . . repealed the so-called life membership provision entirely and the Sovereign Camp Clerk testified in deposition that they were repealed, though the abstract [fols. 164-168] discloses no record of defendant to that effect."

Other criticisms were leveled at the pleadings and evidence, all of which were met by the pleadings and evidence in the case at bar.

In addition thereto, facts were disclosed in the Neff case which do not exist in the case at bar and which clearly distinguish the case at bar from the Neff case. We, therefore, content ourselves with saying that the decisions of the Supreme Court of Nebraska in the Trapp and Haner cases are controlling in this case, and have been followed by the Springfield Court of Appeals in the Garretson case and should be followed by this court in the case at bar. We, therefore, ask that the judgment of the trial court be reversed.

Respectfully submitted, Wright & Ford, Attorneys
for Appellant.

[fol. 169] UNITED STATES OF AMERICA,
State of Missouri, ss:

Be it Remembered that heretofore, to-wit, on the 10th day of September, 1934, there was filed in the office of the Clerk of the Supreme Court of the State of Missouri a transcript in a cause entitled William F. Bolin et al., respondents, against The Sovereign Camp of the Woodmen of the World, a corporation, appellant, No. 34,182.

And thereafter and on the 12th day of November, 1936, the following proceedings were had and entered of record in said cause, to-wit:

WILLIAM F. BOLIN, EDWARD E. BOLIN, SAMUEL A. BOLIN,
John O. Bolin, Sarah B. Campbell, James D. Bolin, Elaine
Scott, Perry Bolin and Homer Bolin, Frank Bolin, Keith
Bolin and Dean Bolin, by Iva Dale, Their Natural Guard-
ian, Respondents,

vs.

THE SOVEREIGN CAMP OF THE WOODMEN OF THE WORLD, a
Corporation, Appellant

Appeal from the Circuit Court of Nodaway County

Now at this day it appearing to the satisfaction of the Court that there is no constitutional question involved, the Court doth order that said cause be, and the same is hereby transferred to the Kansas City Court of Appeals. (Opinion filed.)

Which said opinion is in words and figures following, to-wit:

[fol. 170] IN THE SUPREME COURT OF MISSOURI, DIVISION
NUMBER ONE, SEPTEMBER TERM, 1936.

No. 34,182

WILLIAM F. BOLIN et al., Respondents,

VS.

THE SOVEREIGN CAMP OF THE WOODMEN OF THE WORLD, a
Corporation, Appellant

This is an action on a benefit certificate issued by the defendant to Pleasant Bolin and made payable on his death to his wife, in the sum of \$1000, and for a monument to be erected at his grave. Bolin died on or about July 18, 1933, leaving the plaintiffs as his children and descendants and beneficiaries, his wife having predeceased him a few weeks and no other beneficiaries having been designated in the certificate. The certificate contains a provision that it was incontestable after one year from the date thereof on the ground of irregularities, provided the member to whom it was issued has complied with all its requirements, and contains this provision on its face, "payments to cease after twenty years." The payments-to-cessce provision was ostensibly authorized by a then by-law of the defendant. It was stated that Bolin paid the monthly installments as required by the constitution, laws and by-laws of the order up to and including the month of June, 1916, more than twenty years, and made no further payments thereafter. Defendant claimed the certificate was forfeited on account of failure to pay subsequent dues and assessments.

[fol. 171] In the trial before the court the finding and judgment went for plaintiffs and the defendant appealed to this court. Preliminarily the plaintiffs raise the question of our jurisdiction of the appeal.

It is manifest that "the amount in dispute" does not furnish sufficient basis for our jurisdiction. As will appear the defendant (appellant here) relies on the full faith and credit clause of the federal Constitution as affording the basis of this court's jurisdiction. (U. S. Const. Art. IV, sec. 1) Briefly stated, appellant's position in this regard is predicated upon (1) the admitted fact that appellant was and is

a Nebraska corporation, chartered and domiciled in that state (the statutes of that state appertaining were pleaded in haec verba in appellant's answer); (2) the contract in suit was a Nebraska contract and governed by the laws of that state; (3) the Supreme Court of Nebraska in the case of *Trapp v. Sovereign Camp of the Woodmen of the World*, 102 Nebr. 562, 168 N. W. 191, involving a similar contention to this one, rendered a final decision and judgment that such contract was null and void because ultra vires of the corporation.

The essence of respondents' position is that, the contract was and is a Missouri contract, governed by the laws of Missouri; and that by reason of full performance by Bolin in his lifetime of each and every obligation resting upon him, the appellant is estopped to plead or maintain that the contract was ultra vires of the corporation.

It thus appears that the decisive issue upon which all others were dependent in the instant case was the question of *lex loci contractus*. The ultimate facts on which this issue depended were by the respective parties adequately pleaded to raise such issue, and the printed record discloses ample [fol. 172] substantial evidence pertaining to such issue. The opinion and record of the *Trapp* case, *supra*, was introduced in evidence. It discloses that estoppel of the corporation there to plead and make a defense of ultra vires was not an issue and was not determined in that case. Also, the case did not purport to be a class suit, though that may be of no importance to the present discussion. In the case at bar there was evidence tending to show that Bolin on June 5, 1896, then a resident citizen of Arkoe, Nodaway County, Missouri, entered said association, became a member of said association's subordinate and local Camp at Arkoe, and the benefit certificate herein sued upon was then and there delivered to him by appellant through its proper officer of said local Camp. The named beneficiary also was a resident of Arkoe, and both the insured and the beneficiary continued to reside there the remainder of their lives. His dues and assessments were by him paid to and received by the local Camp, and it was inferable the benefit certificate was to be paid at Arkoe.

The situation this case presents is not like that presented in *Rechow v. Banker's Life Ins. Co.*, 335 Mo. 668, 73 S. W. (2d) 794, cited and relied upon by appellant here. The

defendant there was an Iowa corporation. The validity of an assessment was the decisive question involved. The defendant there claimed that that question was *res adjudicata* because in a certain case appealed by such defendant the Supreme Court of Iowa had adjudged that this particular assessment was valid, such suit being a consolidation of three class suits, in which the plaintiffs were suing for themselves and all others similarly situated as holders of similar certificates issued by that company. The *Rechow* case was determined primarily upon the validity of the questioned assessment and the decision in that respect expressly followed the Iowa adjudication pursuant to the constitutional [fol. 173] full faith and credit clause. The trial court was not at liberty, under the facts and issues of that case, to determine the case without determining the very question determined by the Iowa decision.

We think the matter now under consideration is governed by the decisions in *Zack v. Fidelity & Casualty Company*, 302 Mo. 1, 257 S. W. 124, and *Early v. Knight of the Maccabees of the World*, (Mo. Sup.) 48 S. W. (2d) 890. It was for the trial court to determine whether the contract in suit was a Nebraska contract or a Missouri contract. The fact the court refused instructions offered by appellant to the effect that it was Nebraska contract and that the *Trapp* decision must be followed and applied pursuant to the constitutional provision just mentioned, implies that the view of the court was that a Missouri contract was in controversy and the issues concerning it were to be adjudged under the Missouri decisions; this, irrespective of the constitutional provision. The trial court had a right to do so. *Cass County v. Insurance Co.*, 188 Mo. 1, 86 S. W. 237; *Dissauer v. Maccabees*, 278 Mo. 57, 210 S. W. 896. Therefore in so doing the court did not deprive the appellant of the benefit of the full faith and credit clause. For, as is said in part in the *Zack* case, *supra*, l. c. 7: "From the record before us it is clear that the only question . . . the trial court . . . ruled upon was, whether under the principle of private international law the language of the contract, with reference to the obligation therein created, should be construed according to the law (of the foreign state) or according to that of Missouri. Whether the ruling of the trial court with respect to this question was erroneous, can be determined upon appellate review without reference to the constitutional provision above referred to . . ."

The conclusion necessarily follows that the cause must be transferred to the Kansas City Court of Appeals. Let that be done.

All concur.

Charles Thomas Hays, Judge.

[fol. 174] STATE OF MISSOURI, set:

I, E. F. Elliott, Clerk of the Supreme Court of the State of Missouri, do hereby certify, that the foregoing pages are a full, true and correct copy of the judgment and opinion in the case of William F. Bolin et al., respondents, against The Sovereign Camp of the Woodmen of the World, a corporation, appellant, No. 34,182, as fully and completely as the same appear of record and on file in my office.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Supreme Court, at my office in the City of Jefferson, State aforesaid, this 4th day of March, 1938.

E. F. Elliott, Clerk Supreme Court of Missouri.
(Seal of the Supreme Court of Missouri.)

1

[fol. 175] Thereafter, to-wit: On March 2nd, 1937, in the Kansas City Court of Appeals, the following entry was made of record, to-wit:

No. 18928

Wm. F. BOLIN et al., Respondents,

vs.

THE SOVEREIGN CAMP OF THE WOODMEN OF THE WORLD,
Appellant

Now at this day, come the said parties, by attorneys, after arguments herein, submit this cause to the Court on-briefs.

Thereafter, to-wit: On June 14, 1937, the Court entered of record its judgment herein as follows:

No. 18928

WILLIAM F. BOLIN, EDWARD E. BOLIN, SAMUEL A. BOLIN, John O. Bolin, Sarah E. Campbell, James D. Bolin, Elaine Scott, Perry Bolin, and Homer Bolin, Frank Bolin, Keith Bolin and Dean Bolin, by Iva Dale, Their Natural Guardian, Respondents,

vs.

THE SOVEREIGN CAMP OF THE WOODMEN OF THE WORLD, a Corporation, Appellant

Appeal from Nodaway Circuit Court

Now at this day come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of Nodaway County rendered, be in all things affirmed, and stand in full force and effect. It is further considered and adjudged by the Court that the said respondents recover against the said appellant costs and charges herein expended, and have therefor execution.

(Opinion filed.)

Which said opinion is as follows:

[fol. 176] IN THE KANSAS CITY COURT OF APPEALS, MARCH TERM, 1937

No. 18928

WILLIAM F. BOLIN et al., Respondents,

vs.

THE SOVEREIGN CAMP OF THE WOODMEN OF THE WORLD, a Corporation, Appellant

Appeal from the Circuit Court of Nodaway County

This is a suit on a beneficiary certificate issued by the defendant to Pleasant Bolin of date June 3, 1896, and made payable on his death to his wife in the sum of \$1000 and

for \$100 for a monument to be erected at his grave. Bolin died on or about July 18, 1933, leaving the plaintiffs as his children and descendants and beneficiaries (his wife having predeceased him a short while) and no other beneficiaries having been designated in the certificate.

The certificate contains a provision that it was incontestible after one year from the date thereof on the ground of irregularities, provided the member to whom it was issued had complied with all of its requirements, and contains this provision on its face: "Payments to cease after 20 years." The "payments to cease" clause was ostensibly authorized by a bylaw of the defendant in force at the time the certificate was issued and delivered to Bolin.

It was stated by the defendant in its amended answer that Bolin paid the monthly dues and installments as required by the constitution, laws, and bylaws of the order up to and including the month of June, 1916, more than twenty years, and made no further payments thereafter. The defendant claims that the certificate was forfeited on account of the failure to pay subsequent dues and assessments.

In the trial before the court, the finding and the judgment were for the plaintiff, from which judgment the defendant appealed to the Supreme Court. That court, upon an inspection of the record, found that it had no appellate jurisdiction of the cause and that such jurisdiction was in this court; and the same was ordered to be and was transferred to this court.

The defendant is a corporation, engaged in the business of life insurance, with its home office in the city of Omaha, in the state of Nebraska, under the laws of which state it was organized.

It operates under the lodge system with a ritualistic form of work and representative form of government, without capital stock, and transacts its business without profit and for the sole and mutual benefit of its members and their beneficiaries and provides for the payment of death benefits on certificates which are issued to its members only. Its revenues and income are derived wholly from dues, assessments, and fixed monthly payments collected from its members. It has a constitution and bylaws for its government, by which the payment of death benefits is limited to the family, heirs, blood relatives, or dependants of the members.

At the time that the certificate in question was issued, Pleasant Bolin, the insured, was a resident of the state of Missouri, living at or near Arkoe, in Nodaway county. At such place, he made application through the local officers of the defendant's lodge, which was being organized or maintained at said place, for membership therein and for the certificate in question. He was accepted as a member, and the certificate involved herein was sent by the defendant to its local officers at Arkoe to be signed and delivered by them to him. It was delivered to him by them at such place; and he there paid the dues and assessments thereon due at that time and continued thereafter to make payment of all dues and assessments thereon to the local officers of the defendant's lodge at such place for the defendant as [fol. 178] they became due and payable for twenty years and over, when he ceased to make such payments.

After having ceased to make such payments, he was treated as automatically suspended by the defendant society on the theory that his certificate had become forfeited by reason of his failure to make further payments and that his right to membership in the society had ceased; and that defendant now asserts and contends that such certificate was forfeited by reason of such failure and was not in force at the time of his death.

1. The defendant contends that the "payments to cease" provision in said policy was ultra vires the corporate authority of the defendant and was null and void and that the insured was required under the certificate to continue the payment of dues and assessments from month to month until his death in order to maintain the certificate in force; and it so pleaded in its amended answer. It is contended to the contrary by the plaintiffs; and they contend further that, the insured (Pleasant Bolin) having complied with all of the terms of the certificate as issued to him by the payment of all dues and assessments falling due thereon for twenty years within the times required therefor, he fully performed his obligation and that, the defendant having accepted the payment of all such dues and assessments and retained the same, the certificate remained in force by reason thereof until the time of his death.

By their reply to the defendant's amended answer in this case, the plaintiffs set up estoppel by reason of such facts against the defendant to plead the ultra vires charac-

ter of the certificate in question and its invalidity and other defenses set up in the amended answer.

2. It is contended by the defendant that the contract in question is a Nebraska contract, the construction of which is to be governed by the laws of that state and that, whether it was in force at the time of the death of the insured, together with all related questions, must be determined in this case from the laws of that state and the construction [fol. 179] placed on such laws by the courts of that state. The defendant invokes the "full faith and credit" clause of the Federal Constitution and contends that we are bound thereby, in determining the validity of the provisions of the certificate in question, to determine the same by the laws of that state and by the construction placed thereon by the courts of that state. It sets out in its answer in *haec verba* the laws of that state under which it is incorporated as constituting its charter and pleads an adjudication by the Supreme Court of that state in the case of *Trapp vs. this same defendant*, 102 Nebr. 562, 168 N. W. 191, involving the validity of the "payments to cease" provision in certificates of the same kind as the one herein issued by it, to the effect that such provision is invalid and *ultra vires* the powers of the defendant as a corporation and makes reference to a further case in that court, *Haner vs. Grand Lodge A. O. U. W. of Nebraska*, 102 Nebr. 563, 168 N. W. 189, alleged to adjudicate to the same effect. The record in the former case is fully set out in the record herein. The record in the *Haner* case does not appear herein.

3. Upon the other hand, it is contended by the plaintiffs that the certificate in question is a Missouri contract and is to be construed and governed by the laws of Missouri.

The Supreme Court of this state has determined that the "full faith and credit" clause of the Federal Constitution is not involved herein. It holds that this case is to be determined on the principles of private international law, so far as concerns whether the language of the certificate with reference to the obligations therein shall be construed according to the laws of Nebraska or the law of Missouri, irrespective of the "full faith and credit" provision.

That under our laws it is a Missouri contract is not a debatable question. The certificate was delivered to and accepted by Pleasant Bolin, the insured, in this state. He paid all of the dues and assessments thereon in this state.

This makes it a Missouri contract to which the laws of Missouri apply and, by the laws of which state, it is governed; and the issues concerning it are to be adjudicated in accordance with the decisions of the courts of Missouri. There is a wealth of authority supporting this proposition. (*Whittaker vs. Mutual Life Ins. Co. of N. Y.*, 133 Mo. App. 664, 114 S. W. 53; *Ragsdale vs. Brotherhood of Railroad Trainmen*, 229 Mo. App. 545, 80 S. W. (2) 272; *Hoffman vs. North American Union (Mo. App.)* 56 S. W. (2) 599; *Weed vs. Bank Sav. Life Ins. Co. (Mo. App.)* 24 S. W. (2) 653; *Lukens vs. International Life Ins. Co.*, 269 Mo. 574, 191 S. W. 418; *Head vs. New York Life Ins. Co.*, 241 Mo. 403, 147 S. W. 827; *Mayhew vs. Mutual Life of Illinois*, 217 Mo. App. 429, 266 S. W. 1001; *Cravens vs. New York Life Ins. Co.*, 148 Mo. 583, 50 S. W. 519, 53 L. R. A. 305, 71 Am. St. Rep. 628; *Crohn vs. Order of United Commercial Travelers of America*, 170 Mo. App. 273, 156 S. W. 472; *Horton vs. New York Life Ins. Co.*, 151 Mo. 604, 52 S. W. 356; *Orthwein vs. Germania Life Ins. Co.*, 261 Mo. 650, 170 S. W. 885; *Saunders vs. Union Cent. Life Ins. Co.*, 212 Mo. App. 186, 253 S. W. 177; *Johnson vs. American Cent. Life Ins. Co. of Indianapolis, Ind.*, 212 Mo. App. 299, 249 S. W. 115; 32 C. J. sect. 10, pp. 980, 981.)

4. We having thus determined that the certificate in question is a Missouri contract to be construed according to the laws of Missouri applicable thereto, the further question arises whether the laws of Missouri applicable to fraternal societies shall be applied to it or whether the laws applicable to general insurance societies shall be applied.

It seems to be conceded that the defendant had no license to do business in this state as a fraternal society at the time that the certificate in question was issued, in 1896. The defendant contents itself with saying that no license was required of it at such time and that, by Section 5872, Revised Statutes of Missouri, 1889, relating to assessment companies, it was expressly excluded therefrom. However, such act as to any exclusion therefrom related only to domestic fraternal societies or those organized under the laws of Missouri, not to foreign societies; and the exemption therein contained applied only to domestic fraternal societies.

[fol. 181] There was a hiatus in the laws of Missouri in 1896, at the time the certificate in question was issued,

relating to foreign fraternal societies, by reason of the fact that former laws stood repealed by reason of their omission from the Revision of 1889; and the act of 1897 was not yet in force at such time. (*Mathews vs. Modern Woodmen of America*, 236 Mo. 326, 1. c. 334, 139 S. W. 151; *McDermott vs. Modern Woodmen of America*, 97 Mo. App. 636, 71 S. W. 833; *Hudnall vs. Modern Woodmen of America*, 103 Mo. App. 356, 77 S. W. 84.) And, it was held by the Supreme Court of this state in the case of *Kern vs. Supreme Council American Legion of Honor*, 167 Mo. 471, 67 S. W. 252, that, during such period, fraternal societies organized under the laws of other states doing business herein were not exempted from the laws of this state as to general insurance but were subject to such laws in the construction of their policies.

Moreover, it is the law of this state that any law relating to fraternal insurance relates only to domestic fraternal societies unless by statute it is extended to foreign fraternal societies. (*McDermott vs. Modern Woodmen of America*, supra.)

[fol. 182] The act of 1897—incorporated in the Revision of 1899 as Chapter 12, Article 11—defined fraternal beneficiary associations and declared they should be governed by such act and be exempted from the other provisions of the insurance laws of the state. Such act was made to apply to all such associations, domestic and foreign, at that time doing business in the state, provided that they thereafter complied with the provisions of such act regulating annual reports and the designation of the Superintendent of the Insurance Department as a person upon whom a process might be served, as thereafter provided. (Sections 1408 and 1409, R. S. 1899.)

The act of 1897 was amended in some particulars by the act of 1909, Article 9, Chapter 61, Revised Statutes of 1909; but Section 1409 of said act, applying to the right of fraternal societies then doing business in the state to continue, was carried forward in the act of 1909 as Section 7111 thereof.

By the act of 1911, Article 15, Chapter 50 of the Revision of 1919, the law with reference to fraternal societies was largely recast; and Article 9, Chapter 61, Revision of 1909, was wholly repealed; and a new article was enacted in lieu thereof. With reference to the right of foreign fraternal

societies to transact business in this state, it was provided by Section 6413 of said act;

"No foreign society now transacting business, organized prior to the passage of this article, which is not now authorized to transact business in this state, shall transact any business herein without a license from the superintendent of insurance. * * * Provided, however, that nothing contained in this or the preceding section shall be taken or construed as preventing any such society from continuing in good faith all contracts made in this state during the time such society was legally authorized to transact business herein."

Under the act of 1897 and again under the act of 1909, provision for the admission of foreign fraternal societies not then doing business in this state to do business in this state and to procure therefor a license, upon compliance with certain requirements, was made. Section 6413 of the [fol. 183] Revision of 1919 was carried forward in the Revision of 1929 as Section 6005 of such later revision and is now the law of this state.

5. The defendant nowhere in its amended answer alleges—nor is it shown by the proof—that it was doing business in this state at the time of the enactment of the act of 1897 or that it began doing business in the state since its enactment. It is nowhere alleged in its amended answer or shown in the proofs that it was doing business in this state at the time of the enactment of the act of 1909 or that it began doing business in this state since its enactment. It nowhere alleges in its amended answer that it was doing business in this state at the time of the enactment of the act of 1919. It nowhere alleges that it ever complied with the requirements of either of said acts. It merely alleges in its amended answer that it is now authorized to do business in this state, under the laws of this state, set forth in Article 13, Chapter 37, Revised Statutes of 1929. It is to be presumed from its amended answer and from the state of the proof in the record that it never complied with the acts of 1897, 1909 and 1919 with respect to doing business in this state so as to take its former acts from under the general insurance laws of the state of Missouri. (*Brassfield vs. Knights of the Maccabees*, 92 Mo. App. 102.)

It can not therefore claim that it was exempt from the general insurance laws of this state, at the time the certificate in question was issued. It was under the general insurance laws. (*Ragsdale vs. Brotherhood of Railroad Trainmen*, supra; *Harris vs. Switchmen's Union of North America* (Mo. App.) 237 S. W. 155; *Reid vs. Brotherhood of Railroad Trainmen* (Mo. App.) 232 S. W. 185; *Schmidt vs. Supreme Ct. United Order of Foresters*, 228 Mo. 675, 129 S. W. 653; *Kern vs. Supreme Council American Legion of Honor*, supra; *O'Neal vs. Grand Lodge of Brotherhood of Railroad Trainmen*, 216 Mo. App. 212, 261 S. W. 128; *Saunders vs. Union Cent. Life Ins. Co.*, supra; *Gruwell vs. [fol. 184] Knights and Ladies of Security*, 126 Mo. App. 496 l. c. 501, 104 S. W. 884.)

In the *Gruwell Case*, last above cited, the court says, at pages 501 and 502 of 126 Mo. App.:

"To receive the benefit of the liberal laws and rules of construction pertaining to death benefit certificates issued by fraternal beneficiary associations, defendant had the burden of pleading and proving not only that it possessed the essential qualifications of such societies as described in section 1408, Revised Statutes 1899, but also that, being incorporated under the laws of another State, it had been admitted to do business in this State in the manner provided in section 1410, R. S. 1899. The evidence adduced by defendant falls short of showing that it was qualified for admission into this State as a fraternal beneficiary association, but had that fact been made to appear, we still would be compelled to hold that the contract cannot be considered otherwise than as one of regular insurance, since there is no proof in the record that defendant was admitted to do business in this State as a fraternal order."

In *Cravens vs. New York Life Insurance Company*, supra, 148 Mo. 583 l. c. 604, it is said:

"Foreign insurance companies which do business in this State, do so not by right but by grace, and must in so doing conform to its laws; they can not avail themselves of its benefits without bearing its burdens. Moreover the State may prescribe conditions upon which it will permit foreign insurance companies to transact business within its borders or exclude them altogether and in so doing violates no con-

tractual rights of the company. (*State v. Stone*, 148 Mo. 388; *Daggs v. Ins. Co.*, 136 Mo. 382, s. c., 172 U. S. 557.)

In the absence of any law authorizing it to do business in this state as a foreign fraternal society in 1896, it did business in the state at that time under the general law; and the certificate in question, issued during that year, comes under the general law.

The certificate in question must be considered as a contract of general insurance under the general laws of this state and construed as such and not as a fraternal contract of a fraternal society under the laws of this state. At the [fol. 185] time that it was issued, by reason of the absence of any law authorizing it to do business in this state as a fraternal society, it was subject to the general laws of insurance of this state. (*Korn vs. Supreme Council American Legion of Honor*, supra.)

6. Nor does the record show that the defendant afterward complied with the act of 1897 or the succeeding act of 1909 relating to fraternal insurance in a manner by which it was authorized to do business in this state as a fraternal society or in a manner to take the certificate in question from under the general laws.

7. So considered and construed as a contract of insurance under the general insurance laws of the state, it was a good contract of old line insurance at the time it was issued and is so now.

By the terms of the certificate, it was required that the insured, Pleasant Bolin, pay a specified sum of \$.90 per month from and after June 3, 1896, for a period of twenty years; and, at the expiration of said period of twenty years, all payments were to cease and said certificate should be deemed fully paid and should continue in force and effect until his death, when the specified amount named therein of \$1000 flat and the \$100 for a monument were to be paid to his beneficiary. Certain fixed monthly assessments for different funds were by the defendant's by-laws provided during such term; but such contract was not dependent upon future assessments, unfixed in amounts; and the by-laws were not made a part of the certificate but the certificate was merely subject to such by-laws, their conditions, etc. The by-laws provided that, in the event of a failure to comply with the same by the insured, the certificate would be liable

to forfeiture. (*McPike vs. Supreme Ruling of the Fraternal Mystic Circle*, 187 Mo. App. 679, 173 S. W. 71; *Mackey vs. [fol. 186] vs. Missouri State Life Ins. Co. (Mo. App.)* 238 S. W. 861; *Miller vs. Missouri State Life Ins. Co.* 198 Mo. App. 265, 186 S. W. 762.)

The character of the insurance granted does not depend on the nature of the society granting it but depends upon the terms of the certificate. (*Toomey vs. Knights of Pythias*, 147 Mo. 129, 48 S. W. 936; *Aloe vs. Fidelity Mut. Life Ass'n*, 164 Mo. 675, 55 S. W. 993.)

8. The defendant contends that, under the laws of the state of Nebraska, the state of its incorporation, it, upon its incorporation, became a fraternal society therein and must be so considered here. It may be that it became a fraternal society upon its incorporation in the state of Nebraska, but it does not follow therefrom that it became a fraternal society here. Whether it became a fraternal society here depends entirely upon our own laws relating to fraternal societies and their right to do business in this state. (*Aloe v. Fidelity Mut. Life Ass'n*, supra.)

Moreover, before it could be considered as a fraternal society in this state and have operated as such here, it must have complied with the requirements of the laws of this state authorizing it to operate here. As has already been noted, there was no law in Missouri relating to fraternal societies under which it could operate in this state as a fraternal society or for which it could obtain a license so to do at the time the certificate herein was issued in 1896. At that time, it operated under the general law. (*Kern vs. Supreme Council American Legion of Honor*, supra.)

9. The defendant further contends that, under the laws of the state of Nebraska, it had no right to issue the certificate in question upon the limited payment plan and that its act in [fol. 187] doing so was ultra vires its powers as a fraternal organization and that, such being true in Nebraska, it must be true here. The answer to such contention is that it was not operating in this state as a fraternal organization at the time that the certificate in question was issued. It was operating here subject to the laws relating to regular insurance, by reason of the fact that it had no authority to operate as a fraternal.

If we consider for the moment the defendant's contention as to the ultra vires character of its act in issuing the cer-

tificate in question measured by its charter powers as construed by the court of Nebraska as well made, it does not follow that its act in issuing such certificate was, under the laws of Missouri, ultra vires its powers, whether the defendant be considered in the character of a fraternal society or in the character of an old line company. Whether such act was ultra vires its powers acting in either capacity is a question to be determined by the laws of Missouri. (*Aloe vs. Fidelity Mut. Life Ass'n*, *supra*)

The term "ultra vires" has a broad application and includes not only acts prohibited by the charter but acts which are in excess of powers granted and not prohibited.

The distinction runs through the cases. An ultra vires act which is so by reason of the fact that it is prohibited is absolutely void. One acting thereon has no remedy. Such is not true where the act is merely one in excess of powers granted. In such latter case, where the party acting thereon has fully complied with all of the requirements on his part and the fruits thereof have been accepted by the corporation and retained by it, the plea of ultra vires is not available to it when sued on its contract.

Thus, in the case of *Cass County vs. Mercantile Town Mutual Insurance Company*, 188 Mo. 1, l. c. 14, 86 S. W. 237, [fol. 188] it is said: "It is well settled in this state that the defense of ultra vires is not open to a corporation when the contract has been fully executed on the part of the other contracting party, and it is not expressly prohibited by law. (*Drug Co. v. Robinson*, 81 Mo. 18; *Dairy Co. v. Mooney*, 41 Mo. App. 665; *Welsh v. Brewing Co.*, 47 Mo. App. 608; *Winscott v. Investment Co.*, 63 Mo. App. 867; *Glass v. Brewing Co.*, 47 Mo. App. 641; *Grohmann v. Brown*, 68 Mo. App. 630; *City of Goodland v. Bank*, 74 Mo. App. 365)" To the foregoing citations may be added two recent cases, *Prudential Insurance Company of America vs. German Mutual Fire Insurance Company of Lohman*, by this court, decided May 3, 1937, and not yet reported and *Rechow v. Bankers' Life Co.*, 335 Mo. 668, 73 S. W. (2) 794.

In *Lyneight v. St. Louis Stonemasons' Association*, 55 Mo. App. 538, l. c. 547, it is said:

"The law is that, for acts merely in excess of charter authority corporations can not set up the defense of ultra vires, when the consideration has been received and the transaction executed by the other party."

In the case of the City of Goodland vs. Bank of Darlington, 74 Mo. App. 365, the following is approvingly quoted from Denver Fire Insurance Company vs. McClelland, 9 Colo. 11:

"The plea of ultra vires is not to be understood as an absolute and peremptory defense in all cases of excess of power without regard to other circumstances and conditions. . . . Where a certain act is prohibited by statute, its performance is to be held void because such is the legislative will. So where the consideration of a contract is by law illegal, as where the cause of action arises ex turpe. But where the act is not wrong per se, where the contract is for a lawful purpose in itself, as in the present case, and has been entered into with good faith, and fairly executed by the party who seeks to enforce it, we must assent to the doctrine of those authorities which hold that the excess of the corporate powers of the contracting party which has received the benefit of the contract is an unconscionable defense, which may not be set up to exempt from liability the party so pleading it."

In *Rechow v. Bankers' Life Company*, supra 1. c. 685, [fol. 189] of 335 Mo., it is said:

"In determining the obligation of a private corporation for acts commonly termed ultra vires, an important distinction, noted in every well reasoned case, is sometimes overlooked. No corporation can bind itself or its stockholders by a contract expressly prohibited by the charter or by a statute, or by the general law. Such contracts are strictly ultra vires and create no obligation as far as they are executor, although the consideration therefor may have been received and enjoyed by the corporation. On the other hand, an act or contract merely in excess of the power granted to corporations, but which is not expressly forbidden either by its charter or the general law of the State, although lacking affirmative authority for its performance on account of the silence, on that subject, of its charter or the general law, may yet, if the contract has been executed by the other party and its consideration received by the corporation, bind the latter on the principle of estoppel so that it could not be annulled by the corporation without a return of the consideration received by it."

An examination of the laws of Nebraska incorporated in the record does not reveal any direct prohibition of the defendant's act in issuing the certificate in question with the "payments to cease" clause therein and fails to show any violation of the laws of Nebraska by the defendant in issuing such certificate with such clause therein. Neither is there anything appearing in the laws of the State of Missouri by which such a certificate with such a clause therein is prohibited. Such certificate with such clause therein is not in violation of any law of Missouri, nor is it shown to have been in violation of any law of the state of Nebraska. If of an ultra vires character, it was an act merely in excess of the defendant's charter authority. It was not prohibited by any law. An examination of the opinion in the Trapp case, pleaded by the defendant in its amended answer, shows that the Supreme Court of Nebraska merely held that it was ultra vires. It did not base its holding in that respect upon any provision of the law of Nebraska directly prohibiting such contract. It merely held that it was an ultra vires act which would apply as well in instances of excess [fol. 190] of authority as in instances of direct prohibition of authority.

It must therefore be held, under the facts in the record, that the certificate in question containing the "payments to cease" clause was not ultra vires the powers of the defendant as a corporation to issue under the laws of Missouri, whether considered as a fraternal society or as an old line company, and that the plaintiffs' plea of estoppel to the defense of ultra vires set up by the defendant in its amended answer was well made under the facts in the record and was properly sustained by the trial court.

10. The contention of the defendant that we are concluded not only as to the character of the ultra vires act in question but as to the estoppel, by the holding of the Supreme Court of the State of Nebraska in the Trapp case, is not well made. The certificate being a Missouri contract, whether its act was ultra vires or not is to be determined by the laws of this state, regardless of any holding of the Supreme Court of Nebraska. (*Aloe vs. Fidelity Mut. Life Ass'n*, supra.) While the opinion of the Supreme Court of Nebraska might ordinarily be persuasive on that point or even conclusive in a case involving the exact same issues in the same related manner in this state as that in which

such finding is made, it cannot be so where to follow it would lead to a result not in harmony with the result to be reached by the application of our own law by reason of the different issues involved. Moreover, the Supreme Court of this state, in this case, in a review thereof for jurisdictional purposes upon this appeal held upon this same record that there was no issue of estoppel raised by the pleadings or decided by the court in the Nebraska case so that any question of following the decision of that court in the Trapp case as to estoppel in this case is out of this case. We are not at liberty to make a finding of fact upon the record [fol. 191] different from that made by the Supreme Court, even though upon the record we might be of the opinion that its finding was erroneous—which opinion, however, we do not entertain in this case. (State ex rel. Curtis vs. Broadbuss, 238 Mo. 189, 142 S. W. 340.) We are bound by what our own Supreme Court has said in this same case.

11. The further contention by the defendant that the plea of estoppel against the defendant is not available to the plaintiffs for the reason that the by-laws of the defendant under which the certificate in question was issued, in force at the time that it was issued, providing for the issuance of a policy of the character in question, were repealed by the defendant society, at its annual meeting in 1899, made up of representatives from local societies throughout the country, and that the insured was a party to such repeal is not well made. It is conceded that, at the time that the certificate in question was issued, there was a by-law of the defendant in force which authorized its issuance. This by-law continued in force until it was repealed in 1899. The only effect of such repeal was that there was no longer any by-law in force which authorized the issuance of such a certificate. The repeal had no retroactive effect. The defendant society could not by such repeal divest the rights of the insured under his certificate issued when the by-law was in force. The mere fact that the insured agreed in his application to abide by any and all of the by-laws of the defendant then in force or thereafter made does not affect the matter. Neither is such matter affected by reason of a similar statement in the certificate itself. The insured may have agreed to the repeal of such by-law in 1899, but he did not thereby agree that such repeal should have a retroactive effect and effect in any manner the certificate which had been issued to him

when such by-law was in force (*Neff vs. Sovereign Camp W.* [fol. 193] O. W. 226 Mo. App. 899, 48 S. W. (2) 564; *Crnic vs. Croatian Fraternal Union of America* (Mo. App.) 89 S. W. (2) 683).

The provisions regarding subsequently enacted by-laws are construed to mean such by-laws and rules as may be thereafter enacted to govern and regulate the conduct and management of the affairs of the association and to prescribe the duties of the members and not to change and nullify the contracts entered into with its members. (*Neff vs. Sovereign Camp, W. O. W.*, supra; *Crnic vs. Croatian Fraternal Union of America*, supra).

The *Crnic* case, last cited, was one where, by a subsequent by-law, the rights of the policyholder under his certificate were sought to be changed. The opinion therein said, l. c. 691 of 89 S. W. (2): "To permit defendant, after such right had become vested, by amendatory by-laws or otherwise, to change the benefits in any manner to which plaintiff had become entitled would be to permit it to change and nullify the contract entered into with plaintiff and take away from plaintiff a substantial right conferred by the contract of membership itself. This it cannot be permitted to do. *Neff v. Sovereign Camp, W. O. W.*, 226 Mo. App. 899, 48 S. W. (2) 564; *Constable v. Supreme Tent of Maccabees of the World*, 219 Mo. App. 632, loc. cit. 641, 284 S. W. 515; *Whitmire v. Lawrence, Barry and Stone Counties Mutual Benefit Association* (Mo. App.) 289 S. W. 842; *Dessauer v. Supreme Tent of Knights of Maccabees of the World*, 278 Mo. 57, 210 S. W. 896."

12. The defendant contends that the plea of estoppel is not available to the plaintiffs for the reason that the insured acquiesced in the by-law of 1899 by which the by-laws of the defendant under which his certificate was issued in 1896 was repealed and acquiesced in his suspension as a member of the defendant order, for the reason that, after the expiration of the twenty year period throughout which he made payments as required by his certificate, he had failed to make further payments. The insured may have acquiesced and perhaps did acquiesce in the by-law as to certificates thereunder afterward issued; but that he acquiesced in the view that such by-law affected his certificate so as to divest his rights thereunder or to give the defendant society the right to suspend him from the order and to ren-

der, his certificate void because of his failure to make payments thereon after he had made payments for the full period of twenty years is nowhere shown in the record. After he ceased paying at the expiration of the twenty-year period, the defendant demanded that he continue to pay; and this he refused to do. It thereupon treated him as suspended. Such alleged suspension, from what we have said, was illegal and therefore ineffective. Neither the insured nor the beneficiary was thereupon required to take any action. The contract had been fully performed, and they had the right to treat the certificate as in force. (*Neff vs. Sovereign Camp, W. O. W. supra*; 32 C. J. Art. 462, pp. 1264).

In 32 C. J., Art. 462, p. 1264, *supra*, it is said "—the beneficiary may await the event on which the policy becomes payable, and after the death of the insured may sue for the amount payable under the policy."

See also 45 C. J. Art. 61, p. 72.

13. The certificate in question being a Missouri contract, it necessarily follows that such a contract is governed by Missouri law only. Therefore, the statutes or decisions of the state of Nebraska are not involved and the "full faith and credit" provision of the Federal Constitution likewise is not involved. The Supreme Court of this state, upon this identical record and in the same case, has held that the "full faith and credit" provision of the Federal Constitution is not involved. If such be true, then it follows that neither [fol. 194] the statutes nor the decisions of the state of Nebraska are involved herein in such a manner that the courts of this state are bound to follow them.

The case of *Royal Arcanion vs. Green*, 237 U. S. 531, relied upon by the defendant, is not in point.

In the case of *Neff vs. Sovereign Camp of W. O. W.*, *supra*, the defendant set up as a defense the two Nebraska decisions set up in this case, contending that, under the Federal Constitution, such decisions were required to be given full faith and credit by the trial and the appellate courts in this state and that such courts were required to follow them. It was held, however, in that case, by this court, that such decisions in no way applied as controlling and that the Missouri law alone governed.

In *Ragsdale v. Brotherhood of Railroad Trainmen*, *supra*, the same defense was pleaded, except that the decisions of the states of Illinois and Ohio were set out instead of the

Nebraska decisions. It was held in that case that the "full faith and credit" provision of the Federal Constitution was not involved but that Missouri law alone governed.

It was further held in the case last cited that a foreign company, even though fraternal, can not claim the benefits of the law of Missouri merely because its contracts are of the character mentioned in such law but that, to claim the exemption given, it must come under such law and make its contracts under such law. (*Ragsdale vs. Brotherhood of Railroad Trainmen*, *supra*).

In *Hoffman v. North American Union*, *supra*, the rule is announced that a fraternal benefit certificate delivered within this state, insuring a resident of this state, on which all premiums are paid in this state, is governed by the laws of this state, notwithstanding any and all provisions to the contrary in the policy and the insurer's by-laws. Numerous decisions already cited in this case are to the same effect.

14. The Trapp case is not on all fours with this case. That case did not involve any question as to the status of the defendant therein being that of a regular or old line insurance company rather than of a fraternal society on coming into the state and issuing the certificate in question without any law authorizing it to do so as a fraternal society. The certificate in that case was treated as the contract of a fraternal society duly authorized to do business as such in the state of Nebraska, where it was issued. The question of the ultra vires character of the certificate was not discussed, considered, or determined from any standpoint other than that it was the contract of a fraternal society duly authorized to do business as such, which was in violation of the charter powers of the defendant as such. That it was ultra vires the powers of the defendant society considered as an old line or regular insurance company, operating under circumstances subjecting its contracts to the general insurance laws rather than the laws relating to fraternal societies, was not involved or determined.

Many of the propositions omitted from the Trapp case are involved in this case. It is determined in this case that the defendant society, at the time that the certificate in question was issued, was not operating in this state as a fraternal society but was operating under the general laws of this state. The two cases are not therefore alike.

Furthermore, the question of estoppel involved in this case was not involved in the Trapp case. The Supreme Court of this state has so held in this instant case, and it so appears from the record.

15. Likewise, the case of Garretson vs. Sovereign Camp, W. O. W., 210 Mo. App. 539, 243 S. W. 257, decided by the Springfield Court of Appeals, is not on all fours with this case. No question of the character of the certificate in [fol. 196] therein as being that of the contract of a regular or old line insurance company rather than that of a fraternal arose or was discussed in that case. Nor was the ultra vires character of such certificate discussed, considered, or determined from the standpoint that it was to be treated as the contract of an old line or regular insurance company rather than that of a fraternal. No question of the right of the defendant society in that case to do and transact business as a fraternal society and to issue fraternal benefit contracts was raised. The certificate in question was treated as having been issued by the defendant as a fraternal society duly authorized by the laws of this state to operate as such, although it seems to have been issued during the year 1895 when it was not so authorized. It was admitted in that case that the defendant was a fraternal society, organized under the laws of Nebraska and authorized to do business in this state. That is not true here. While there was a question of estoppel in that case, it was based on facts entirely different from the facts on which the estoppel herein is based, none of which are present herein. It was held in that case, in answer to the contention made herein, that whether the Missouri courts are bound by the Nebraska decisions in the Trapp case under the "full faith and credit" provision of the Federal Constitution was unnecessary to be determined. Neither of such cases therefore is controlling in this case or brings it within Royal Arcanion vs. Green, supra, relied on by the defendant.

16. The decision of the Nebraska court in the Trapp case, if followed herein, would lead to a different result from that to be reached by an application of the Missouri law, upon all the issues involved herein, and therefore to a result in conflict with the result to be reached under the application of our own law. This is a sufficient reason

[fol. 197] in itself why it should not be followed. One of the fundamental questions in this case relates to the status of the defendant society at the time the certificate in question was issued and the character of the certificate in question, dependent on the status of the defendant society, which is to be determined wholly by the laws of Missouri and which was not involved in the Trapp case.

17. The defendant complains of the refusal by the trial court to give its instructions C, D, E, and F. From what has been said, it is clear that there was no error on the part of the trial court in the refusal of such instructions. It is unnecessary to discuss in detail complaints in regard thereto. They have been fully covered by what has been said.

The judgment of the lower court should be and is affirmed. All concur.

Robert M. Reynolds, J.

[fol. 198]. Thereafter, on June 24, 1937, appellant filed typewritten motion for rehearing and suggestions in support thereof, which said motion is as follows:

[fol. 199] IN THE KANSAS CITY COURT OF APPEALS, MARCH TERM, 1937

No. 18,928

WILLIAM F. BOLIN et al., Respondents,

v.

THE SOVEREIGN CAMP OF THE WOODMEN OF THE WORLD, a Corporation, Appellant

APPELLANT'S MOTION FOR REHEARING

Appellant moves for a rehearing in this case for the following reasons:

(1) Questions decisive of the cause and duly submitted by counsel have been overlooked or disregarded by the Court, to-wit: Under Article IV, Section 1, U. S. Constitution, and under the decisions herein cited, full faith and

credit should have been given to the Nebraska decisions sustaining appellant's plea of *ultra vires* and *res adjudicata*.

Article IV, Sec. 1 U. S. Constitution; *Neff v. Sov. Camp*, 48 S. W. (2) 564, l. c. 570, 226 Mo. App. 899; *Young v. Ins. Co.* 211 S. W. 1, l. c. 2, 277 Mo. 694; *Sov. Camp v. Shelton*, 46 Sup. Ct. Rep. 207; *Garretson v. Sov. Camp*, 210 Mo. App. 539, l. c. 547, 243 S. W. 257; *Royal Arcanum v. Green*, 237 U. S. 531, 35 S. Ct. Rep. 724; *Hartford Life Ins. Co. v. Ibs*, 237 U. S. 662, 35 S. Ct. Rep. 692; *Modern Woodmen of America v. Mixer*, 267 U. S. 544, 45 S. Ct. Rep. 389; *Hartford Life Ins. Co. v. Barber*, 245 U. S. 146, 38 S. Ct. Rep. 54; *Chicago & Alton Ry. v. Wiggins Ferry Co.*, 119 U. S. 615; *Canada Southern R. R. Co. v. Gebhard*, 109 U. S. 527, l. c. 537; *Hartford Life Ins. Co. v. Johnson*, 249 U. S. 490, 39 S. Ct. Rep. 336; *Gaines v. Sup. Council Royal Arcanum*, 140 Fed. 978, D. C. Tenn.; *Rechow v. Ins.* 73 S. W. (2) (Mo.) 794; *Bank of Augusta v. Earle*, 38 U. S. 519, 13 Peters 274; *Relfe v. Rundle*, 103 U. S. 222; *Marin v. Augedahl*, 247 U. S. 142, 62 L. Ed. 1038; *Harkins v. Glenn*, 131 U. S. 319; *Hancock Nat. Bank v. Farnum*, 176 U. S. 640; *Bernheimer v. Converse*, 206 U. S. 516; *Converse v. Hamilton*, 224 U. S. 243; *Selig v. Hamilton*, 234 U. S. 652.

(2) The opinion is in conflict with the controlling decisions of the Supreme Court of Missouri, holding that this Court is bound under the full faith and credit mandate of the Constitution and under the decisions heretofore cited, to give full faith and credit to the Nebraska decisions holding that the by-law in question was void *ab initio*, that the "payments to cease" clause was *ultra vires* the society, and that estoppel would not lie.

Young v. Ins. Co., 211 S. W. 1, 277 Mo. 694; *Rechow v. Ins. Co.*, 73 S. W. (2) (Mo.) 794.

(3) The opinion is in conflict with the decision in *Garretson v. Sov. Camp*, 210 Mo. App. 539, holding that it is the duty of the Missouri courts to follow said Nebraska decisions on the issues of *ultra vires* and estoppel.

[fol. 200] (4) The opinion holding that the certificate is an old line contract is in conflict with the decisions of the

Supreme Court of Missouri in *Westerman v. Supreme Lodge*, 196 Mo. 670, and *Claudy v. Royal League*, 259 Mo. 92.

(5) The Court overlooked the authorities cited and the record in holding that the certificates in the Trapp and Garretson cases and the certificate in the instant case were of different character, the former being fraternal and the latter old line, and that, therefore, those decisions were not authorities to be followed. The Trapp case was a class case and Bolin was a party thereto and was bound by the decree.

(6) The Court overlooked the authorities cited and the record in sustaining the plea of estoppel. There was no pleadings, proof or claim that the assured was misled into paying assessments or that the society would wrongfully profit or the beneficiary wrongfully suffer by reason of the plea of ultra vires. The opinion of the Court is not in harmony with the following cases: *Grafeman v. Bank*, 235 S. W. 435, 290 Mo. 311; *State ex rel. v. Sevier*, 73 S. W. (2) 361, l. c. 373; 335 Mo. 269; *State v. Co.*, 53 S. W. (2) 394, l. c. 399, 331 Mo. 337; *State ex rel. v. Hamilton*, 303 Mo. 302, l. c. 317, 260 S. W. 466; *Bales v. Perry*, 51 Mo. 449, l. c. 453; *Spurlock v. Sproule*, 72 Mo. 503, l. c. 510; *Burke v. Adams*, 80 Mo. 504, l. c. 514; *Bramell v. Adams*, 146 Mo. 70; *Northup v. Colter*, 150 Mo. App. 639; *Baker v. McInturff*, 49 Mo. App. 505, l. c. 509.

(7) The laws of the society were a part of the certificate by its own terms and by the constitution of the society. The opinion of this Court violates the contract of the society and deprives it of its constitutional rights, as will more fully be shown in the suggestions which follow.

Bedford v. Assn., 181 U. S. 227; 44 L. Ed. 834.

(8) The opinion of this Court overlooks the authorities cited and the record in holding that simply because the society was not entitled to claim certain privileges and exemptions under the fraternal statutes, it thereby became old line.

Rainey T. Wells, Wright & Ford, Harding, Murphy & Tucker, Attorneys for Appellant.

[fol. 201] Thereafter, on July 7, 1937, the Court sustained appellant's motion for rehearing and entered of record the following:

No. 18928

WM. F. BOLIN et al., Respondents,

vs.

THE SOVEREIGN CAMP, WOODMEN OF THE WORLD, Appellant

Now at this day, the Court having considered and fully understood the appellant's motion for rehearing herein, doth order that the said motion be sustained, and that this cause be continued to the October Term, 1937.

Thereafter, to-wit: On October 5, 1937, the Court entered of record the following:

No. 18928

WM. F. BOLIN et al., Respondents,

vs.

THE SOVEREIGN CAMP, W. O. W., Appellant

Come now the said parties, by attorneys, and after arguments herein, submit this cause to the Court on briefs.

Thereafter, to-wit: On November 15, 1937, the Court entered of record its judgment herein as follows:

[fol. 202]

No. 18928

WILLIAM F. BOLIN, EDWARD E. BOLIN, SAMUEL A. BOLIN, John O. Bolin, Sarah B. Campbell, James D. Bolin, Elaine Scott, Perry Bolin, Homer Bolin, Frank Bolin, Keith Bolin and Dean Bolin, by Iva Dale, Their Natural Guardian, Respondents,

vs.

THE SOVEREIGN CAMP WOODMEN OF THE WORLD, a Corporation, Appellant

Appeal from Nodaway Circuit Court

Now at this day, come again the parties aforesaid, by their respective attorneys, and the Court here being now

sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of Nodaway County rendered, be in all things affirmed, and stand in full force and effect. It is further considered and adjudged by the Court that the said respondent recover against the said appellant, costs and charges herein expended, and have therefor execution. (Opinion filed.)

Which said opinion is as follows:

[fol. 203] Thereafter, to-wit: On November 24, 1937, the appellant filed its typewritten motion for rehearing and modification, which said motion is as follows:

[fol. 204] IN THE KANSAS CITY COURT OF APPEALS

No. 18,928

WILLIAM F. BOLIN et al., Respondents,

v.

THE SOVEREIGN CAMP OF THE WOODMEN OF THE WORLD,
a Corporation, Appellant

APPELLANT'S MOTION FOR REHEARING AND MODIFICATION

Appellant moves for a rehearing in this case for the following reasons:

(1) Questions decisive of the cause and duly submitted by counsel have been overlooked or disregarded by the Court, to-wit: Under Article IV, Section 1, U. S. Constitution, and under the decisions herein cited, full faith and credit should have been given to the Nebraska decisions sustaining appellant's plea of ultra vires and res adjudicata.

Article IV, Sec. 1, U. S. Constitution; Neff v. Sov. Camp, 48 S. W. (2) 564, 1. c. 570, 226 Mo. App. 899; Young v. Ins. Co., 211 S. W. 1, 1. c. 2, 277 Mo. 694; Sov. Camp v. Shelton, 46 Sup. Ct. Rep. 207; Garretson v. Sov. Camp, 210 Mo. App. 539, 1. c. 547, 243 S. W. 257; Royal Arcanum v. Green, 237 U. S. 531, 35 S. Ct. Rep. 724; Hartford Life Ins. Co. v. Ibs, 237 U. S. 662, 35 S. Ct. Rep. 692;

Modern Woodmen of America v. Mixer, 267 U. S. 544, 46 S. Ct. Rep. 389; Hartford Life Ins. Co. v. Barber, 245 U. S. 146, 38 S. Ct. Rep. 54; Chicago & Alton Ry. v. Wiggins Ferry Co., 119 U. S. 615; Canada Southern S. R. Co. v. Gebhard, 109 U. S. 537, 1. c. 537; Hartford Life Ins. Co. v. Johnson, 249 U. S. 490, 39 S. Ct. Rep. 336; Gaines v. Sup. Council Royal Arcanum, 140 Fed. 978, D. C. Tenn., Rechow v. Ins. 73 S. W. (2) (Mo.) 794; Bank of Augusta v. Earle, 38 U. S. 519, 13 Peters 274; [fol. 205] Relfe v. Rundle, 103 U. S. 222; Marin v. Augedahl, 247 U. S. 319; Hancock Nat. Bank v. Farnum, 176 U. S. 640; Bernheimer v. Converse, 206 U. S. 516; Converse v. Hamilton, 224 U. S. 243; Selig v. Hamilton, 234 U. S. 652. ☉

(2) The opinion is in conflict with the controlling decisions of the Supreme Court of Missouri, holding that this Court is bound under the full faith and credit mandate of the constitution and under the decisions heretofore cited, to give full faith and credit to the Nebraska decisions holding that the by-law in question was void ab initio, that the "payments to cease" clause was ultra vires the society and that estoppel would not lie.

Young v. Ins. Co., 211 S. W. 1, 227 Mo. 694.

Rechow v. Ins. Co., 73 S. W. (2) (Mo.) 794.

(3) The opinion is in conflict with the decision in Garretson v. Sov. Camp, 210 Mo. App. 539, holding that it is the duty of the Missouri courts to follow said Nebraska decisions on the issues of ultra vires and estoppel.

(4) The opinion holding that the certificate is an old line contract is in conflict with the decisions of the Supreme Court of Missouri in Westerman v. Supreme Lodge, 196 Mo. 670, and Claudy v. Royal League, 259 Mo. 92.

(5) The court overlooked the authorities cited and the record in holding that the certificates in the Trapp and Garretson cases and the certificate in the instant case were of different character, the former being fraternal and the latter old line, and that, therefore, those decisions were not authorities to be followed. The Trapp case was a class case and Bolin was a party thereto and was bound by the decree.

(6) The court overlooked the authorities cited and the record in sustaining the plea of estoppel. There was no pleadings, proof or claim that the assured was misled into paying assessments or that the society would wrongfully profit or the beneficiary wrongfully suffer by reason of the plea of ultra vires. The opinion of the Court is not in harmony with the following cases: *Grafeman v. Bank*, 235 S. W. 435, 290 Mo. 311; *State ex rel. v. Sevier*, 73 S. W. (2) 361, l. c. 373, 335 Mo. 369; *State v. Cp.*, 53 S. W. (2) 394, l. c. 399, 331 Mo. 337; *State ex rel. v. Hamilton*, 303 Mo. 302, l. c. 317, 260 S. W. 466; *Bales v. Perry*, 51 Mo. 449, l. c. 453; *Spurlock v. Sproule*, 72 Mo. 503, l. c. 510; *Burke v. Adams*, 80 Mo. 504, l. c. 514; *Bramell v. Adams*, 146 Mo. 70; *Northup v. Colter*, 150 Mo. App. 639; *Baker v. McInturff*, 49 Mo. App. 505, l. c. 509.

(7) The laws of the society were a part of the certificate by its own terms and by the constitution of the society. The opinion of this Court violates the contract of the society and deprives it of its constitutional rights, as will more fully be shown in the suggestions which follow.

Bedford v. Assn., 181 U. S. 227, 44 L. Ed. 834.

(8) In addition to the above, appellant moves that the opinion be modified as follows:

The Court found that appellant having neither pleaded nor proved compliance with the fraternal statutes of Missouri in 1897, and thereafter, the contract must be treated as old line and, therefore, the society can neither invoke the authority of *Garretson v. Sovereign Camp* or the *Trapp* and *Haner* cases, *supra*, or the full faith and credit provision of the Federal Constitution, and that the questions of ultra vires and estoppel should be decided by the laws of Missouri.

That part of the opinion fully settled all the issues in the case, but this Honorable Court after having found that the contract was old-line, and that, therefore, appellant is not entitled to plead ultra vires, went further and held that [fol. 207] even if the contract were fraternal, the society could not invoke the *Garretson*, *Trapp* and *Haner* cases and ultra vires could not be pleaded. The Court having fully and completely decided this case, that part of the opinion was unnecessary and unhappily results in tying appellant's hands and leaving it exposed and defenseless to thousands

of similar suits as is more fully shown in the following suggestions.

Rainey T. Wells, M. E. Ford, Harding, Murphy & Tucker, Attorneys for Appellant.

[fol. 208] Thereafter, to-wit: On January 10, 1938, the Court overruled appellant's motion for rehearing and modification, and entered of record the following:

No. 18928

WILLIAM F. BOLIN et al., Respondents,

vs.

SOVEREIGN CAMP, WOODMEN OF THE WORLD, Appellant

Now at this day, the Court having considered and fully understood the appellant's motion for rehearing and modification herein, doth consider and adjudge that the said motion be, and the same is hereby overruled.

(Additional opinion filed.)

Which said additional opinion is as follows:

[fol. 209] IN THE KANSAS CITY COURT OF APPEALS, OCTOBER TERM, 1937

No. 18928

WILLIAM F. BOLIN et al. Respondents

vs.

THE SOVEREIGN CAMP OF THE WOODMEN OF THE WORLD, a Corporation, Appellant,

Appeal from the Circuit Court of Nodaway County

This case is before us on rehearing. It is a suit on a beneficiary certificate issued by the defendant to Pleasant Bolin of date June 3, 1896, and made payable on his death to his wife in the sum of \$1000 and for \$100 for a monument to be erected at his grave. Bolin died on or about July 18, 1933, leaving the plaintiffs as his children and descendants and beneficiaries (his wife having pre-deceased him a short

while) and no other beneficiaries having been designated in the certificate.

The certificate contains a provision that it was incontestible after one year from the date thereof on the ground of irregularities, provided the member to whom it was issued had complied with all of its requirements, and contains this provision on its face: "Payments to cease after 20 years." The "payments to cease" clause was ostensibly authorized by a bylaw of the defendant in force at the time the certificate was issued and delivered to Bolin.

It was stated by the defendant in its amended answer that Bolin paid the monthly dues and installments as required by the constitution, laws, and bylaws of the order up to and including the month of June, 1916, more than twenty years, and made no further payments thereafter. The defendant claims that the certificate was forfeited on account of the failure to pay subsequent dues and assessments.

[fol. 210] In the trial before the court, the finding and the judgment were for the plaintiffs, from which judgment the defendant appealed to the Supreme Court. That court, upon an inspection of the record, found that it had no appellate jurisdiction of the cause and that such jurisdiction was in this court; and the same was ordered to be and was transferred to this court.

The defendant is a corporation, engaged in the business of life insurance, with its home office in the city of Omaha, in the state of Nebraska, under the laws of which state it was organized.

It operates under the lodge system with a ritualistic form of work and representative form of government, without capital stock, and transacts its business without profit and for the sole and mutual benefit of its members and their beneficiaries and provides for the payment of death benefits on certificates which are issued to its members only. Its revenues and income are derived wholly from dues, assessments, and fixed monthly payments collected from its members. It has a constitution and bylaws for its government, by which the payment of death benefits is limited to the family, heirs, blood relatives, or dependents of the members.

At the time that the certificate in question was issued, Pleasant Bolin, the insured, was a resident of the state of Missouri, living at or near Arkoe, in Nodaway county.

At such place, he made application through the local officers of the defendant's lodge, which was being organized or maintained at said place, for membership therein and for the certificate in question. He was accepted as a member, and the certificate involved herein was sent by the defendant to its local officers at Arkoe to be signed and delivered by them to him. It was delivered to him by them at such place; and he there paid the dues and assessments thereon due at that time and continued thereafter to make payment of all dues and assessments thereon to the local officers of the defendant's lodge at such place for the defendant as they became due and payable for [fol. 211] twenty years and over, when he ceased to make such payments.

After having ceased to make such payments, he was treated as automatically suspended by the defendant society on the theory that his certificate had become forfeited by reason of his failure to make further payments and that his right to membership in the society had ceased; and the defendant now asserts and contends that such certificate was forfeited by reason of such failure and was not in force at the time of his death.

1. The defendant contends that the "payments to cease" provision in said policy was ultra vires the corporate authority of the defendant and was null and void and that the insured was required under the certificate to continue the payment of dues and assessments from month to month until his death in order to maintain the certificate in force; and it so pleaded in its amended answer. It is contended to the contrary by the plaintiffs; and they contend further that, the insured (Pleasant Bolin) having complied with all of the terms of the certificate as issued to him by the payment of all dues and assessments falling due thereon for twenty years within the times required therefor, he fully performed his obligation and that, the defendant having accepted the payment of all such dues and assessments and retained the same, the certificate remained in force by reason thereof until the time of his death.

By their reply to the defendant's amended answer in this case, the plaintiffs set up estoppel by reason of such facts against the defendant to plead the ultra vires character of the certificate in question and its invalidity and other defenses set up in the amended answer.

2. It is contended by the defendant that the construction of the contract in question is to be governed by the laws of the state of Nebraska and that whether it was in force at the time of the death of the insured, together with all related questions, must be determined in this case from the [fol. 212] laws of that state and the construction placed on such laws by the courts of that state. The defendant invokes the "full faith and credit" clause of the Federal Constitution and contends that we are bound thereby, in determining the validity of the provisions of the certificate in question, to determine the same by the laws of that state and by the construction placed thereon by the courts of that state. It sets out in its answer in *hæc verba* the laws of that state under which it is incorporated as constituting its charter and pleads an adjudication by the Supreme Court of that state in the case of *Trapp v. this same defendant*, 102 Nebr. 562, 168 N. W. 191, involving the validity of the "payments to cease" provision in certificates of the same kind as the one herein issued by it, to the effect that such provision is invalid and *ultra vires* the powers of the defendant as a corporation and makes reference to a further case in that court, *Haner v. Grand Lodge, A. O. U. W. of Nebraska*, 102 Nebr. 563, 168 N. W. 189, alleged to adjudicate to the same effect. The record in the former case is fully set out in the record herein. The record in the *Haner Case* does not appear herein.

3. Upon the other hand, it is contended by the plaintiffs that the certificate in question is a Missouri contract and is to be construed and governed by the laws of Missouri.

The Supreme Court of this state has determined that the "full faith and credit" clause of the Federal Constitution is not involved herein.

That under our laws it is a Missouri contract is not a debatable question. The certificate was delivered to and accepted by Pleasant Bolin, the insured, in this state. He paid all of the dues and assessments thereon in this state. This makes it a Missouri contract to which the laws of Missouri apply and by the laws of which state it is governed; and the issues concerning it are to be adjudicated in accordance with the decisions of the courts of Missouri. There is a wealth of authority supporting this proposition. (*Whitaker v. Mutual Life Ins. Co. of N. Y.*, 133 Mo. App. 664, 114 S. W. 53; *Ragsdale v. Brotherhood of Railroad*

Trainmen, 229 Mo. App. 545, 80 S. W. (2) 272; Hoffman v. North American Union, (Mo. App.) 56 S. W. (2d) 599; Weed v. Bank Sav. Life Ins. Co., (Mo. App.) 24 S. W. (2) 653; Lukens v. International Life Ins. Co., 269 Mo. 574, 191 S. W. 418; Head v. New York Life Ins. Co., 241 Mo. 403, 147 S. W. 827; Mayhew v. Mutual Life of Illinois, 217 Mo. App. 429, 266 S. W. 1001; Cravens v. New York Life Ins. Co., 148 Mo. 583, 50 S. W. 519, 53 L. R. A. 305, 71 Am. St. Rep. 628; Crohn v. Order of United Commercial Travelers of America, 170 Mo. App. 273, 156 S. W. 472; Horton v. New York Life Ins. Co., 151 Mo. 604, 52 S. W. 356; Orthwein v. Germania Life Ins. Co., 261 Mo. 650, 170 S. W. 885; Saunders v. Union Cent. Life Ins. Co., 212 Mo. App. 186, 253 S. W. 177; Johnson v. American Cent. Life Ins. Co. of Indianapolis, Ind., 212 Mo. App. 299, 249 S. W. 115; 32 C. J., sect. 10, pp. 980, 981.)

4. We having thus determined that the certificate in question is a Missouri contract, to be construed according to the laws of Missouri applicable thereto, the further question arises whether the laws of Missouri applicable to fraternal societies shall be applied to it or whether the laws applicable to general insurance societies shall be applied.

It seems to be conceded that the defendant had no license to do business in this state as a fraternal society at the time that the certificate in question was issued, in 1896. The defendant contents itself with saying that no license was required of it at such time and that, by Section 5872, Revised Statutes of Missouri, 1889, relating to assessment companies, it was expressly excluded therefrom. However, such act as to any exclusion therefrom related only to domestic fraternal societies or those organized under the laws of Missouri, and not to foreign societies; and the exemption therein contained applied only to domestic fraternal societies.

There was a hiatus in the laws of Missouri in 1896, at the time the certificate in question was issued, relating to foreign fraternal societies, by reason of the fact that former laws [fol. 214] stood repealed by reason of their omission from the Revision of 1889; and the act of 1897 was not yet in force at such time. (Mathews v. Modern Woodmen of America, 236 Mo. 326, l. c. 334, 139 S. W. 151; McDermott v. Modern Woodmen of America, 97 Mo. App. 636, 71 S. W. 833; Hudnall v. Modern Woodmen of America, 103 Mo. App. 356, 77 S. W. 84.) And it was held by the Supreme

Court of this state in the case of *Kern v. Supreme Council American Legion of Honor*, 167 Mo. 471, 67 S. W. 252, that, during such period, fraternal societies organized under the laws of other states doing business herein were not exempted from the laws of this state as to general insurance but were subject to such laws in the construction of their policies.

Moreover, it is the law of this state that any law relating to fraternal insurance relates only to domestic fraternal societies unless by statute it is extended to foreign fraternal societies. (*McDermott v. Modern Woodmen of America*, supra.)

The act of 1897—incorporated in the Revision of 1899 as Chapter 12, Article 11—defined fraternal beneficiary associations and declared they should be governed by such act and be exempted from the other provisions of the insurance laws of the state. Such act was made to apply to all such associations, domestic and foreign, at that time doing business in the state, provided that they thereafter complied with the provisions of such act regulating annual reports and the designation of the Superintendent of the Insurance Department as a person upon whom a process might be served as thereafter provided. (Sections 1408. and 1409, R. S. 1899.)

The act of 1897 was amended in some particulars by the act of 1909, Article 9, Chapter 61, Revised Statutes of 1909; but Section 1409 of said act, applying to the right of fraternal societies then doing business in the state to continue, was carried forward in the act of 1909 as Section 7111 thereof.

By the act of 1911, Article 15, Chapter 50 of the Revision of 1919, the law with reference to fraternal societies was [fol. 215] largely recast; and Article 9, Chapter 61, Revision of 1909, was wholly repealed; and a new article was enacted in lieu thereof. With reference to the right of foreign fraternal societies to transact business in this state, it was provided by Section 6413 of said act:

“No foreign society now transacting business, organized prior to the passage of this article, which is not now authorized to transact business in this state, shall transact any business herein without a license from the superintendent of insurance. . . . Provided, however, that nothing contained in this or the preceding section shall be taken or

construed as preventing any such society from continuing in good faith all contracts made in this state during the time such society was legally authorized to transact business herein."

Under the act of 1897 and again under the act of 1909, provision for the admission of foreign fraternal societies not then doing business in this state to do business in this state and to procure therefor a license, upon compliance with certain requirements, was made. Section 6413 of the Revision of 1919 was carried forward in the Revision of 1929 as Section 6005 of such later revision and is now the law of this state.

5. The defendant nowhere in its amended answer alleges—nor is it shown by the proof—that it was doing business in this state at the time of the enactment of the act of 1897 or that it began doing business in the state since its enactment. It is nowhere alleged in its amended answer or shown in the proofs that it was doing business in this state at the time of the enactment of the act of 1909 or that it began doing business in this state since its enactment. It nowhere alleges in its amended answer that it was doing business in this state at the time of the enactment of the act of 1919. It nowhere alleges that it ever complied with the requirements of either of said acts. It merely alleges in its amended answer that it is now authorized to do business in this state, under the laws of this state, set forth in Article 13, Chapter 37, Revised Statutes of 1929. It is to be pre-[fol. 216] sumed from its amended answer and from the state of the proof in the record that it never complied with the acts of 1897, 1909, and 1919 with respect to doing business in this state so as to take its former acts from under the general insurance laws of the state of Missouri. (*Brassfield v. Knights of the Maccabees*, 92 Mo. App. 102.)

It cannot therefore claim that it was exempt from the general insurance laws of this state at the time the certificate in question was issued. It was under the general insurance laws. (*Ragsdale v. Brotherhood of Railroad Trainmen*, supra; *Harris v. Switchmen's Union of North America*, (Mo. App.) 237 S. W. 155; *Reid v. Brotherhood of Railroad Trainmen*, (Mo. App.) 232 S. W. 185; *Schmidt v. Supreme Ct. United Order of Foresters*; 228 Mo. 675, 129 S. W. 653; *Kern v. Supreme Council American Legion of*

Honor, *supra*; *O'Neal v. Grand Lodge of Brotherhood of Railroad Trainmen*, 216 Mo. App. 212, 261 S. W. 128; *Saunders v. Union Cent. Life Ins. Co.*, *supra*; *Gruwell v. Knights & Ladies of Security*, 126 Mo. App. 496, l. c. 501, 104 S. W. 884.)

In the *Gruwell* case, last above cited, the court says, at pages 501 and 502 of 126 Mo. App.:

"To receive the benefit of the liberal laws and rules of construction pertaining to death benefit certificates issued by fraternal beneficiary associations, defendant had the burden of pleading and proving not only that it possessed the essential qualifications of such societies as described in section 1406, Revised Statutes 1899, but also that, being incorporated under the laws of another State, it had been admitted to do business in this State in the manner provided in Section 1410 R. S. 1899. The evidence adduced by defendant falls short of showing that it was qualified for admission into this State as a fraternal beneficiary association, but had that fact been made to appear, we still would be compelled to hold that the contract cannot be considered otherwise than as one of regular insurance, since there is no proof in the record that defendant was admitted to do business in this State as a fraternal order."

In *Cravens v. New York Life Insurance Company*, *supra*, 148 Mo. 583, l. c. 604, it is said:

[fol. 217] "Foreign insurance companies which do business in this State, do so not by right but by grace, and must in so doing conform to its laws; they cannot avail themselves of its benefits without bearing its burdens. Moreover the State may prescribe conditions upon which it will permit foreign insurance companies to transact business within its borders or exclude them altogether and in so doing violates no contractual rights of the company. (*State v. Stone*, 118 Mo. 388; *Daggs v. Ins. Co.*, 136 Mo. 382, s. c., 172 U. S. 557.)"

In the absence of any law authorizing it to do business in this state as a foreign fraternal society in 1896, it did business in the state at that time under the general law; and the certificate in question, issued during that year, comes under the general law.

The certificate in question must be considered as a contract of general insurance under the general laws of this

state and construed as such and not as a fraternal contract of a fraternal society under the laws of this state. At the time that it was issued, by reason of the absence of any law authorizing it to do business in this state as a fraternal society, it was subject to the general laws of insurance of this state. (*Kern v. Supreme Council American Legion of Honor*, supra.)

6. Nor does the record show that the defendant afterward complied with the act of 1897 or the succeeding act of 1909 relating to fraternal insurance in a manner by which it was authorized to do business in this state as a fraternal society or in a manner to take the certificate in question from under the general laws.

7. So considered and construed as a contract of insurance under the general insurance laws of the state, it was a good contract of old line insurance at the time it was issued and is so now.

By the terms of the certificate, it was required that the insured, Pleasant Bolin, pay a specified sum of \$.90 per month from and after June 3, 1896, for a period of twenty years; and, at the expiration of said period of twenty years, [fol. 218] all payments were to cease and said certificate should be deemed fully paid and should continue in force and effect until his death, when the specified amount named therein of \$1000 flat and the \$100 for a monument were to be paid to his beneficiary. Certain fixed monthly assessments for different funds were by the defendant's bylaws provided during such term. The bylaws provided that, in the event of a failure to comply with the same by the insured, the certificate would be liable to forfeiture. (*McPike v. Supreme Ruling of the Fraternal Mystic Circle*, 187 Mo. App. 679, 173 S. W. 71; *Mackey v. Missouri State Life Ins. Co.*, (Mo. App.) 238 S. W. 861; *Miller v. Missouri State Life Ins. Co.*, 198 Mo. App. 265, 186 S. W. 762.)

The character of the insurance granted does not depend upon the nature of the society granting it but depends upon the terms of the certificate. (*Toomey v. Knights of Pythias*, 147 Mo. 129, 48 S. W. 936; *Aloe v. Fidelity Mut. Life Ass'n*, 164 Mo. 675, 55 S. W. 993.)

8. The defendant contends that, under the laws of the State of Nebraska, the state of its incorporation, it, upon its incorporation, became a fraternal society therein and

must be so considered here. It may be that it became a fraternal society upon its incorporation in the state of Nebraska, but it does not follow therefrom that it became a fraternal society here. Whether it became a fraternal society here depends entirely upon our own laws relating to fraternal societies and their right to do business in this state. (*Aloe v. Fidelity Mut. Life Ass'n*, supra.)

Moreover, before it could be considered as a fraternal society in this state and have operated as such here, it must have complied with the requirements of the laws of this state authorizing it to operate here. As has already been noted, there was no law in Missouri relating to fraternal societies under which it could operate in this state as a fraternal society or for which it could obtain a license so to do at the time the certificate herein was issued in 1896. At that time, it operated under the general law. [fol. 219] (*Kern v. Supreme Council American Legion of Honor*, supra.)

9. The defendant further contends that, under the laws of the state of Nebraska, it had no right to issue the certificate in question upon the limited payment plan and that its act in doing so was ultra vires its powers as a fraternal organization and that, such being true in Nebraska, it must be true here. The answer to such contention is that it was not operating in this state as a fraternal organization at the time that the certificate in question was issued. It was operating here subject to the laws relating to regular insurance, by reason of the fact that it had no authority to operate as a fraternal.

If we consider for the moment the defendant's contention as to the ultra vires character of its act in issuing the certificate in question measured by its character powers as construed by the court of Nebraska as well made, it does not follow that its act in issuing such certificate was, under the laws of Missouri, ultra vires its powers, whether the defendant be considered in the character of a fraternal society or in the character of an old line company. Whether such act was ultra vires its powers acting in either capacity is a question to be determined by the laws of Missouri. (*Aloe v. Fidelity Mut. Life Ass'n*, supra). Likewise, the question of estoppel. (*Illinois Fuel Co. v. Mobile & O. R. Co.*, 319 Mo. 899, 8 S. W. (2) 834.)

The term "ultra vires" has a broad application and includes not only acts prohibited by the charter but acts which are in excess of powers granted and not prohibited.

The distinction runs through the cases. An ultra vires act which is so by reason of the fact that it is prohibited is absolutely void. One acting thereon has no remedy. Such is not true where the act is merely one in excess of powers granted. In such latter case, where the party acting thereon has fully complied with all of the requirements on his part and the fruits thereof have been accepted by [fol. 220] the corporation and retained by it, the plea of ultra vires is not available to it when sued on its contract.

Thus, in the case of *Cass County v. Mercantile Town Mutual Insurance Company*, 188 Mo. 1, l. c. 14, 86 S. W. 237, it is said: "It is well settled in this State that the defense of ultra vires is not open to a corporation when the contract has been fully executed on the part of the other contracting party, and it is not expressly prohibited by law. (*Drug Co. v. Robinson*, 81 Mo. 18; *Dairy Co. v. Mooney*, 41 Mo. App. 665; *Welsh v. Brewing Co.*, 47 Mo. App. 608; *Winscott v. Investment Co.*, 63 Mo. App. 367; *Glass v. Brewing Co.*, 47 Mo. App. 641; *Grohmann v. Brown*, 68 Mo. App. 630; *City of Goodland v. Bank*, 74 Mo. App. 365)." To the foregoing citations may be added two recent cases, *Prudential Insurance Company of America v. German Mutual Fire Insurance Company of Lohman*, by this court, decided May 3, 1937, and reported in 105 S. W. (2) at page 1001, and *Rechow v. Bankers' Life Co.*, 335 Mo. 668, 73 S. W. (2) 794.

In *Lysaght v. St. Louis Stonemasons' Association*, 55 Mo. App. 538, l. c. 547, it is said:

"The law is that, for acts merely in excess of charter authority corporations can not set up the defense of ultra vires, when the consideration has been received and the transaction executed by the other party."

In the case of *City of Goodland v. Bank of Darlington*, 74 Mo. App. 365, the following is approvingly quoted from *Denver Fire Insurance Company v. McClelland*, 9 Colo. 11:

"The plea of ultra vires is not to be understood as an absolute and peremptory defense in all cases of excess of power without regard to other circumstances and conditions . . . Where a certain act is prohibited by stat-

ute, its performance is to be held void because such is the legislative will. So where the consideration of a contract is by law illegal, as where the cause of action arises ex turpe. But where the act is not wrong per se, where the [fol. 221] contract is for a lawful purpose in itself, as in the present case, and has been entered into with good faith, and fairly executed by the party who seeks to enforce it, we must assent to the doctrine of those authorities which hold that the excess of the corporate powers of the contracting party which has received the benefit of the contract is an unconscionable defense, which may not be set up to exempt from liability the party so pleading it."

In *Rechow v. Bankers' Life Company*, supra, l. c. 685 of 335 Mo., it is said:

"In determining the obligation of a private corporation for acts commonly termed ultra vires, an important distinction, noted in every well reasoned case, is sometimes overlooked. No corporation can bind itself or its stockholders by a contract expressly prohibited by the charter or by a statute, or by the general law. Such contracts are strictly ultra vires and create no obligation as far as they are executory, although the consideration therefor may have been received and enjoyed by the corporation. On the other hand, an act or contract merely in excess of the power granted to corporations, but which is not expressly forbidden either by its charter or the general law of the State, although lacking affirmative authority for its performance on account of the silence, on that subject, of its charter or the general law, may yet, if the contract has been executed by the other party and its consideration received by the corporation, bind the latter on the principle of estoppel so that it could not be annulled by the corporation without a return of the consideration received by it."

An examination of the laws of Nebraska incorporated in the record does not reveal any direct prohibition of the defendant's act in issuing the certificate in question with the "payments to cease" clause therein and fails to show any violation of the laws of Nebraska by the defendant in issuing such certificate with such clause therein. Neither is there anything appearing in the laws of the State of Missouri by which such a certificate with such a clause therein

is prohibited. Such certificate with such clause therein [fol. 222] is not in violation of any law of Missouri, nor is it shown to have been in violation of any law of the state of Nebraska. If of an ultra vires character, it was an act merely in excess of the defendant's charter authority. It was not prohibited by any law. An examination of the opinion in the Trapp Case, pleaded by the defendant in its amended answer, shows that the Supreme Court of Nebraska merely held that it was ultra vires. It did not base its holding in that respect upon any provision of the law of Nebraska directly prohibiting such contract. It merely held that it was an ultra vires act which would apply as well in instances of excess of authority as in instances of direct prohibition of authority.

It must therefore be held, under the facts in the record, that the certificate in question containing the "payments to cease" clause was not ultra vires the powers of the defendant as a corporation to issue under the laws of Missouri, whether considered as a fraternal society or as an old line company, and that the plaintiffs' plea of estoppel to the defense of ultra vires set up by the defendant in its amended answer was well made under the facts in the record and was properly sustained by the trial court.

10. The contention of the defendant that we are concluded, not only as to the character of the ultra vires act in question but as to the estoppel, by the holding of the Supreme Court of the state of Nebraska in the Trapp Case is not well made. The certificate being a Missouri contract, whether its act was ultra vires or not is to be determined by the laws of this state, regardless of any holding of the Supreme Court of Nebraska. (*Aloe v. Fidelity Mut. Life Ass'n*, supra; *Illinois Fuel Co. v. Mobile & O. R. Co.*, supra.) Moreover, the Supreme Court of this state, in that case, in a review thereof for jurisdictional purposes upon this appeal, held upon this same record that there was no issue of estoppel raised by the pleadings or decided by the court in the Nebraska case so that any question of following the decision of that court in the Trapp Case as to estoppel in this case is out of this case. We are not at liberty to make a finding [fol. 223] of fact upon the record different from that made by the Supreme Court, even though upon the record we might be of the opinion that its finding was erroneous—which opinion, however, we do not entertain in this case.

(State ex rel. Curtis v. Broadus, 238 Mo. 189, 142 S. W. 340). We are bound by what our own Supreme Court has said in this same case.

11. The further contention by the defendant that the plea of estoppel against the defendant is not available to the plaintiffs for the reason that the bylaws of the defendant under which the certificate in question was issued, in force at the time that it was issued, providing for the issuance of a policy of the character in question, were repealed by the defendant society, at its annual meeting in 1899, made up of representatives from local societies throughout the country, and that the insured was a party to such repeal is not well made. It is conceded that, at the time that the certificate in question was issued, there was a bylaw of the defendant in force which authorized its issuance. This bylaw continued in force until it was repealed in 1899. The only effect of such repeal was that there was no longer any bylaw in force which authorized the issuance of such a certificate. The repeal had no retroactive effect. The defendant society could not by such repeal divest the rights of the insured under his certificate issued when the bylaw was in force. The mere fact that the insured agreed in his application to abide by any and all of the bylaws of the defendant then in force or thereafter made does not affect the matter. Neither is such matter affected by reason of a similar statement in the certificate itself. The insured may have agreed to the repeal of such bylaw in 1899, but he did not thereby agree that such repeal should have a retroactive effect and affect in any manner the certificate which had been issued to him when such bylaw was in force. (Neff v. Sovereign Camp W. O. W., 226 Mo. App. 899, 48 S. W. (2) 564; Ornic v. Croatian Fraternal Union of America, (Mo. App.) 89 S. W. (2) 685).

[fol. 224] The provisions regarding subsequently enacted bylaws are construed to mean such bylaws and rules as may be thereafter enacted to govern and regulate the conduct and management of the affairs of the association and to prescribe the duties of the members and not to change and nullify the contracts entered into with its members. (Neff v. Sovereign Camp W. O. W., supra; Ornic v. Croatian Fraternal Union of America, supra.)

The Ornic Case, last cited, was one where, by a subsequent bylaw, the rights of the policy holder under his certificate

were sought to be changed. The opinion therein said, l. c. 691 of 89 S. W. (2): "To permit defendant, after such right had become vested, by amendatory bylaws or otherwise, to change the benefits in any manner to which plaintiff had become entitled would be to permit it to change and nullify the contract entered into with plaintiff and take away from plaintiff a substantial right conferred by the contract of membership itself. This it cannot be permitted to do. *Neff v. Sovereign Camp*, W. O. W. 226 Mo. App. 899, 48 S. W. (2) 564; *Constable v. Supreme Tent of Maccabees of the World*, 219 Mo. App. 632, loc. cit. 641, 284 S. W. 515; *Whitmire v. Lawrence, Barry and Stone Counties Mutual Benefit Association* (Mo. App.) 289 S. W. 842; *Dessauer v. Supreme Tent of Knights of Maccabees of the World*, 278 Mo. 57, 210 S. W. 896."

12. The defendant contends that the plea of estoppel is not available to the plaintiffs for the reason that the insured acquiesced in the by-law of 1899 by which the bylaws of the defendant under which his certificate was issued in 1896 was repealed and acquiesced in his suspension as a member of the defendant order, for the reason that, after the expiration of the twenty year period throughout which he made payments as required by his certificate, he had failed to make further payments. The insured may have acquiesced and perhaps did acquiesce in the bylaw as to certificates thereunder afterward issued; but that he acquiesced in the [fol. 225] view that such bylaw affected his certificate so as to divest his rights thereunder or to give the defendant society the right to suspend him from the order and to render his certificate void because of his failure to make payments thereon after he had made payments for the full period of twenty years is nowhere shown in the record. After he ceased paying at the expiration of the twenty-year period, the defendant demanded that he continue to pay; and this he refused to do. It thereupon treated him as suspended. Such alleged suspension, from what we have said, was illegal and therefore ineffective. Neither the insured nor the beneficiary was thereupon required to take any action. The contract had been fully performed, and they had the right to treat the certificate as in force. (*Neff v. Sovereign Camp W. O. W.*, supra; 32 C. J. Art. 462, p. 1264)

In 32 C. J., Art. 462, p. 1264, it is said: "• • • the beneficiary may await the event on which the policy becomes

payable, and after the death of the insured may sue for the amount payable under the policy."

See also 45 C. J., Art. 61, p. 72.

13. The certificate in question being a Missouri contract, it necessarily follows that such a contract is governed by Missouri law only. Therefore, the statutes or decisions of the State of Nebraska are not involved; and the "full faith and credit" provision of the Federal Constitution likewise is not involved. The Supreme Court of this state, upon this identical record and in the same case, has held that the "full faith and credit" provision of the Federal Constitution is not involved. If such be true, then it follows that neither the statutes nor the decisions of the state of Nebraska are involved herein in such a manner that the courts of this state are bound to follow them.

The case of *Royal Arcanum v. Green*, 237 U. S. 531, relied upon by the defendant, is not in point.

In the case of *Neff v. Sovereign Camp of W. O. W.*, supra, the defendant set up as a defense the two Nebraska decisions [fol. 226] set up in this case, contending that; under the Federal Constitution, such decisions were required to be given full faith and credit by the trial and the appellate courts in this state and that such courts were required to follow them. It was held, however, in that case, by this court, that such decisions in no way applied as controlling and that the Missouri law alone governed.

In *Ragsdale v. Brotherhood of Railroad Trainmen*, supra, the same defense was pleaded, except that the decisions of the states of Illinois and Ohio were set out instead of the Nebraska decisions. It was held in that case that the "full faith and credit" provision of the Federal Constitution was not involved but that Missouri law alone governed.

It was further held in the case last cited that a foreign company, even though fraternal, can not claim the benefits of the law of Missouri merely because its contracts are of the character mentioned in such law but that, to claim the exemption given, it must come under such law and make its contracts under such law. (*Ragsdale v. Brotherhood of Railroad Trainmen*, supra.)

In *Hoffman v. North American Union*, supra, the rule is announced that a fraternal benefit certificate delivered within this state, insuring a resident of this state, on which

all premiums are paid in this state, is governed by the laws of this state, notwithstanding any and all provisions to the contrary in the policy and the insurer's by-laws. Numerous decisions already cited in this case are to the same effect.

14. The Trapp Case is not on all fours with this case. That case did not involve any question as to the status of the defendant therein being that of a regular or old line insurance company rather than of a fraternal society on coming into the state and issuing the certificate in question without any law authorizing it to do so as a fraternal society. The certificate in that case was treated as the con-[fol. 227] tract of a fraternal society duly authorized to do business as such in the state of Nebraska, where it was issued. The question of the ultra vires character of the certificate was not discussed, considered, or determined from any standpoint other than that it was the contract of a fraternal society duly authorized to do business as such, which was not in violation of the charter powers of the defendant as such. That it was ultra vires the powers of the defendant society considered as an old line or regular insurance company, operating under circumstances subjecting its contracts to the general insurance laws rather than the laws relating to fraternal societies, was not involved or determined.

Many of the propositions omitted from the Trapp Case are involved in this case. It is determined in this case that the defendant society, at the time that the certificate in question was issued, was not operating in this state as a fraternal society but was operating under the general laws of this state. The two cases are not therefore alike. Furthermore, the question of estoppel involved in this case was not involved in the Trapp Case. The Supreme Court of this state has so held in this instant case, and it so appears from the record.

15. Likewise, the case of Garretson v. Sovereign Camp, W. O. W., 210 Mo. App. 539, 243 S. W. 257, decided by the Springfield Court of Appeals, is not on all fours with this case. No question of the character of the certificate involved therein as being that of the contract of a regular or old line insurance company rather than that of a fraternal arose or was discussed in that case. Nor was the ultra

vires character of such certificate discussed, considered, or determined from the standpoint that it was to be treated as the contract of an old line or regular insurance company rather than that of a fraternal. No question of the right of the defendant society in that case to do and transact business as a fraternal society and to issue fraternal benefit contracts was raised. The certificate in question was [fol. 228] treated as having been issued by the defendant as a fraternal society duly authorized by the laws of this state to operate as such, although it seems to have been issued during the year 1895 when it was not so authorized. It was admitted in that case that the defendant was a fraternal society, organized under the laws of Nebraska and authorized to do business in this state. That is not true here. While there was a question of estoppel in that case, it was based on facts entirely different from the facts on which the estoppel herein is based, none of which are present herein. It was held in that case, in answer to the contention made herein, that whether the Missouri courts are bound by the Nebraska decisions in the Trapp Case under the "full faith and credit" provision of the Federal Constitution was unnecessary to be determined. Neither of such cases therefore is controlling in this case or brings it within *Royal Arcanum v. Green*, supra, relied on by the defendant.

16. One of the fundamental questions in this case relates to the status of the defendant society at the time the certificate in question was issued and the character of the certificate in question, dependent on the status of the defendant society, which is to be determined wholly by the laws of Missouri and which are not involved in the Trapp Case.

17. The defendant complains of the refusal by the trial court to give its instructions C, D, E, and F. From what has been said, it is clear that there was no error on the part of the trial court in the refusal of such instructions. It is unnecessary to discuss in detail complaints in regard thereto. They have been fully covered by what has been said.

The judgment of the lower court should be and is affirmed. All concur.

Robert M. Reynolds, J.

[fol. 229] IN THE KANSAS CITY COURT OF APPEALS, OCTOBER
TERM, 1937

No. 18929

WILLIAM F. BOLIN, EDWARD E. BOLIN, SAMUEL A. BOLIN,
John O. Bolin, Sarah E. Campbell, James D. Bolin, Elaine
Scott, Perry Bolin, and Homer Bolin, Frank Bolin, Keith
Bolin, and Dean Bolin by Iva Dale, their Natural Guar-
dian, Respondents,

vs.

THE SOVEREIGN CAMP OF THE WOODMEN OF THE WORLD, a
Corporation, Appellant

OPINION ON MOTION FOR REHEARING

From a careful study of the appellant's motion for a rehearing in this case, we conclude that the appellant misinterprets and misapplies the language used in the opinion.

In a judicial opinion, the language used by the court should only be considered as applied to the facts and issues before the court for consideration. It often occurs that language directed to specific issues in any given case, if taken from its context and applied to a different issue or to a different state of facts, will present an erroneous declaration of law.

There is in the case at bar well defined issues and the language of the opinion must be given a meaning and interpretation in light of the well defined issue.

The contract of insurance in this case was issued to one of the members of the organization in the state of Missouri in the year 1896. The organization appears as a chartered mutual company under the laws of Nebraska. It established camps or lodges in the state of Missouri and issued its certificates to the members of the lodges or camps in Missouri.

It is conceded that the appellant company was not chartered to do business in the state of Missouri at the time the contract was issued. The facts are that at the time the contract was issued, there was no law in Missouri relating to foreign fraternal societies and no such law existed until 1897.

[fol. 230] The opinion in this case holds the contract in issue to be a Missouri contract and that in effect the con-

tract is an old line insurance contract and that "full faith and credit" is not involved; that the laws and decisions of Nebraska are not controlling; and that the law and decisions of Missouri control.

Clause No. 5 of the opinion in this case clearly sets forth the failure of appellant to, by its pleadings, bring itself within the position to urge in this case any claim that it is or was exempt from the general insurance laws of this state.

The appellant in its presentations before this court made contentions as to ultra vires and urges that same be controlled by construction by the courts of Nebraska.

This court being confronted by insistence of appellant on the above point says:

"If we consider for the moment the defendant's contention as to the ultra vires character of its act in issuing the certificate in question measured by its charter powers as construed by the court of Nebraska as well made, it does not follow that its act in issuing such certificate was, under the laws of Missouri, ultra vires its powers, whether the defendant be considered in the character of a fraternal society or in the character of an old line company. Whether such act was ultra vires its powers acting in either capacity is a question to be determined by the laws of Missouri. (*Aloe v. Fidelity Mut. Life Ass'n*, supra), Like wise, the question of estoppel. (*Illinois Fuel Co. v. Mobile & O. R. Co.*, 319 Mo. 899, 8 S. W. (2) 834."

In the opinion in this case it was held "*under the facts in the record*" (Italics ours) the "payment cease" clause was not ultra vires whether considered as fraternal or old line.

Appellant seems greatly aggrieved at the above language. We conclude that appellant is unduly alarmed. There is [fol. 231] certainly nothing revolutionary in the statement that "regardless of the fact of whether or not an old line or fraternal society contracts be involved" questions of ultra vires and likewise questions of estoppel will be determined by the laws of Missouri. The fact that under the facts in the record we hold against ultra vires can not be construed that we would so hold under a different state of facts.

Appellant has at all times urged that the defendant is a fraternal benefit society. We take defendant's word for

that fact and in the opinion bring out the fact, that the association at the time the contract was issued came under the general provisions of the insurance laws of this state, there being no Missouri law at the time relieving mutual companies of the provisions of the general law. Further, as set forth in paragraph No. 5 of the opinion, attention is called to the fact that there is no showing that the society has ever put itself in a position to relieve itself from the general law. In other words, concluding defendant to be a fraternal society, it is not shown to be in a position to avail itself of the laws of this state in regard to fraternal mutual benefit societies.

Appellant in its application for a rehearing seems to anticipate further litigation. If so, and the facts and issues be identical with the case at bar, we are still convinced that the opinion, as applied to the facts and issues as shown in the case at bar, is right.

The appellant is shown to be so manifestly concerned about anticipated matters that we conclude it not amiss to say: If the pleadings had shown any fact that would exclude its society from the general insurance laws of this state and if the pleadings had made a showing to the effect that the company had complied with the fraternal laws of 1897 and the amendments thereto, then an entirely different state of facts and issues would be presented. However, no such case is before us and our conclusions on such a case [fol. 232] are not called for. If such a case be presented to this court, we assert the right of this court to decide all matters of ultra vires and estoppel by the laws of Missouri. However, if the laws of Missouri make distinction, as applied to old line and mutual contracts, it will suffice to make distinction, if so, when such question is before us.

Rehearing denied.

All concur.

Hopkins, B. Shain, P. J.

[fol. 233] Thereafter, to-wit, on February 28, 1938, the appellant filed its typewritten petition for stay of mandate, which said petition is as follows:

[fol. 234] ^A IN THE KANSAS CITY COURT OF APPEALS

No. 18,928

WILLIAM F. BOLIN, et al., Respondents,

vs.

SOVEREIGN CAMP OF THE WOODMEN OF THE WORLD, Appellant

PETITION FOR STAY OF MANDATE

Now comes appellant, Sovereign Camp of the Woodmen of the World; and respectfully shows to the court that the Supreme Court of Missouri has denied its petition for a writ of certiorari to review the judgment of this court in the above entitled cause, and that appellant now intends to, and will within the time allowed under the applicable laws and rules of the Supreme Court of the United States, apply to said Supreme Court of the United States for the issuance of its writ of certiorari to review the judgment of this court rendered in the above entitled cause.

Appellant therefore prays this court to stay and withhold its mandate in the above entitled cause until appellant shall have filed in the Supreme Court of the United States its petition for a writ of certiorari and said Supreme Court of the United States shall have ruled thereon.

Wright & Ford, Harding, Murphy & Tucker, Attorneys for Appellant.

[fol. 235] Thereafter, to-wit, on March 15, 1938, the Court entered of record the following:

WILLIAM F. BOLIN et al., Respondents,

vs.

SOVEREIGN CAMP, WOODMEN OF THE WORLD, Appellant

Now at this day, it appearing to the Court from the motion of the said appellant, that the said appellant desires to prosecute a writ of certiorari to the United States Supreme Court herein, it is ordered that the mandate of this Court be, and it is hereby stayed in the above entitled cause until after appellant shall have filed in the Supreme Court of the United States its petition for the issuance of a writ of cer-

tiorari to this Court, and until said Supreme Court of the United States shall have ruled thereon.

STATE OF MISSOURI, sct:

I, Renick Jones, Clerk of the Kansas City Court of Appeals do hereby certify that the above and foregoing is a full, true and complete transcript of the record and proceedings in the above entitled cause as the same appear of record and on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the Kansas City Court of Appeals in my office in Kansas City, Missouri, this 16th day of March, 1938.

• Renick Jones, Clerk. (Seal Kansas City Court of Appeals.)

[fol. 236] UNITED STATES OF AMERICA,

• State of Missouri, ss:

Be it Remembered that heretofore, to-wit, on the 31st day of January, 1938, there was filed in the office of the Clerk of the Supreme Court of the State of Missouri, a petition, together with notice and suggestions, for a writ of certiorari in a cause entitled State of Missouri, at the relation of The Sovereign Camp of the Woodmen of the World, rel. vs. Hopkins B. Shain et al., Judges of the Kansas City Court of Appeals, resps., No. 35,922, which said petition, notice and suggestions are in words and figures following, to-wit:

IN THE SUPREME COURT OF MISSOURI

STATE OF MISSOURI at the Relation and to the Use of THE
SOVEREIGN CAMP OF THE WOODMEN OF THE WORLD, Relator,
vs.

Honorable HOPKINS B. SHAIN, Honorable EWING C. BLAND
and Honorable ROBERT M. REYNOLDS, Judges of the Kansas City Court of Appeals, Respondents

[fol. 237] PETITION FOR WRIT OF CERTIORARI

To the Honorable Judges of the Supreme Court of Missouri:

Relator respectfully says:

1. That respondents are and were the duly elected, qualified and acting judges of the Kansas City Court of Appeals

at the time the opinions hereinafter referred to were written by said court.

2. That on August 31, 1933, there was instituted in the Circuit Court of Nodaway County, Missouri, an action entitled "William F. Bolin et al., Plaintiffs, v. Sovereign Camp of the Woodmen of the World, Defendant," in which plaintiffs, as beneficiaries under benefit certificate No. 8953 issued by relator to one Pleasant Bolin, sought to recover of relator, as defendant in said action, the sum of \$1,000.00 as death benefits and the sum of \$100.00 as other expenses under said benefit certificate; that on April 13, 1934, trial of said action was had resulting in a judgment for plaintiff in the amount of \$1,100.00; that relator thereafter duly appealed to this court where the cause, on motion of respondents, was transferred to the Kansas City Court of Appeals; that thereafter said Kansas City Court of Appeals filed an opinion affirming the judgment rendered by the trial court, and thereafter, upon rehearing, filed a subsequent opinion affirming said judgment, copy of which is hereto attached and marked Exhibit "A"; that thereafter relator duly filed its motion for rehearing which was overruled by respondents, and an additional opinion filed, copy of which is hereto attached and marked Exhibit "B."

3. That, as shown by said opinions, relator is a corporation organized under the laws of the State of Nebraska with a lodge system, a ritualistic form of work and representative form of government; that it has no capital stock and transacts its business without profit for the sole and mutual benefit of its members by providing in its constitution and bylaws for the payment of death benefits to the family, heirs, blood relatives or dependents of its respective members under benefit certificates issued by it only to its members; that the funds from which such benefits are paid by relator are derived solely from dues, assessments and monthly payments collected from, and paid by, its members.

4. That, as shown likewise by said opinions of respondents, on or about June 5, 1896, relator issued the certificate sued on, which, pursuant to Section 82 of its bylaws then thought to be effective, was stamped in the upper right-[fol. 238] hand corner of the regular form thereof, the words "payments to cease after 20 years," and in the body

thereof the usual language providing, in substance, that the certificate was liable to forfeiture if the members failed to pay the monthly assessments or to comply with the constitution and bylaws of relator then in force, or thereafter to be adopted, to which constitution and bylaws the issuance and acceptance of the certificate was subject; that said Section 82 of the bylaws of relator provided as follows:

"Life membership certificates shall be issued . . . to all members . . . under the following conditions:

"When the certificate of a member who has entered the order between the ages of 16 and 33 has been in force and binding for thirty years; or of members entering between 34 and 42 years of age when the certificate has attained the age of twenty-five years, and all members entering the order over 43 years of age when the certificate has attained the age of twenty years, and that after the said life membership certificate has been issued the life member shall not be liable for camp dues, assessments or general fund dues; that the proper officers of the Sovereign Camp shall issue quarterly assessment costs upon *all members* of the Woodmen of the World, regardless of jurisdiction or nation, for a sufficient amount to pay all death claims accruing during the previous three months for said life members who have died during said time under this provision"

This section was repealed by the membership in the year 1899, since which time the society has been carrying on as if said section had never been enacted; that the charter and laws of relator, as well as the applicable statutes of the State of Nebraska, under which relator's charter was issued, have been interpreted by the Supreme Court of Nebraska, the highest judicial tribunal of that state, in the cases of *Haner v. Grand Lodge*, 102 Neb. 563 (168 N. W. 189), and *Trapp v. This Relator*, 102 Neb. 562 (168 N. W. 191), all of which were pleaded in relator's answer, and said court in said cases held that

"the association could not directly write a contract for this class of insurance and the law will not permit the association to evade the statute and do by indirection what it may not directly do . . . it cannot waive the provisions of the statutes made for its government."

[fol. 239] and that the enactment of Section 82 and the inclusion of the "payments to cease" clause in said certificate were each ultra vires of relator, and were void ab initio; that said Nebraska cases held that a society is not estopped from making said plea of ultra vires. In the Haner case is the following:

"It is argued that the association is estopped to deny the validity of this section of the bylaws. The association was operating under the statute at the time plaintiff became a member. Plaintiff, as a member of the association, was a party to the adoption of this bylaw."

and then holds that the plea of ultra vires will lie and the plea of estoppel will not lie.

5. The opinions show that the assured paid his assessments for more than 20 years when he ceased to pay; that when assured ceased to pay his assessments, he was thereafter treated as having been automatically suspended from membership and this situation continued for 17 years, at which time—July 18, 1933—the assured died, whereupon, this suit was filed and judgment rendered as stated.

6. It was held in said opinions, among other things:

(a) That the aforesaid certificate was a Missouri contract to be governed by the laws of Missouri without regard to said Nebraska decisions, and that since it was neither pleaded nor proven that relator had complied with the fraternal statutes of Missouri for 1897 and, thereafter, it must be considered as an old line contract of insurance.

(b) That notwithstanding said decisions of the highest court of the State of Nebraska, construing relator's charter and laws and the applicable statutes of Nebraska (the domicile of relator), and holding that said bylaw and said "payments to cease" clause were violative of relator's charter and said applicable statutes and were, therefore, ultra vires and void, and also holding that the society was not estopped from pleading ultra vires, said opinions held that said Nebraska cases were not applicable and that the plea of estoppel would lie under the laws of Missouri.

(c) That both the question of ultra vires and the issue of estoppel to assert the plea of ultra vires are to be determined by the laws of Missouri without regard to the decisions of the highest court of the state of the domicile

of relator, and that under the laws of Missouri said Section 82 was valid and binding, and that the insertion of the "payments to cease" clause in said certificate was not ultra vires, but was legal and binding, and that even if said section [fol. 240] tion and said clause were ultra vires, relator was estopped from asserting it.

(d) That neither the trial court nor said Kansas City Court of Appeals were bound to give full faith and credit under Article IV, Section 1, of the Constitution of the United States, to the decisions of the highest court of the State of Nebraska, construing relator's charter and laws and the applicable statutes of Nebraska, and defining and limiting the powers of relator under said charter and said statutes and holding that Section 82 was ultra vires and void ab initio and the inclusion of the "payments to cease" clause in said certificate was ultra vires, void and unenforceable even against a plea of estoppel, thus creating a different relationship between relator and its members in the State of Missouri from the relation between said relator and its members in the State of Nebraska and other states; that is to say, that said contract means one thing in Nebraska and an entirely different thing in Missouri and other states.

7. That said opinions of respondents are in direct conflict with, and respondents have failed or refused to follow, the last controlling decisions of the Supreme Court of Missouri hereinafter referred to in the following respects:

(a) By holding that the said decisions and said applicable statutes of the State of Nebraska as construed by the Supreme Court of that state in the case of Haner v. Grand Lodge, A. O. U. W., supra, and Trapp v. Sovereign Camp, W. O. W., supra, under which relator's charter was granted, and whereunder the enactment of the aforesaid Section 82 of relator's bylaws and the inclusion of the "payments to cease after 20 years" clause in the certificate were each ultra vires of relator and void ab initio, are not entitled to full faith and credit under Article IV, Section 1, of the Constitution of the United States, said opinions are in direct conflict with, and respondents have failed to follow, the last controlling decisions of this court in the cases of Young v. Hartford Life Insurance Co., 277 Mo. 694, 211 S. W. 1, and Rechow v. Bankers Life Co., 335 Mo. 668, 73 S. W. (2d) 794, both of which were called to the attention

of respondents in relator's brief and in its motion for rehearing, and is also in direct conflict with the controlling decisions of the Supreme Court of the United States in the cases of *Royal Arcanum v. Green*, 237 U. S. 531, 35 Sup. Ct. 724; *Modern Woodmen of America v. Mixer*, 267 U. S. 544, 45 Sup. Ct. 389; *Hartford Life Ins. Co. v. Ibs*, 237 U. S. 662, 35 Sup. Ct. 692, and *Hartford Life Ins. Co. v. Barber*, 245 U. S. 146, 38 Sup. Ct. 54, and the decision of the Spring-[fol. 241] field Court of Appeals in the case of *Garretson v. Sovereign Camp*, 210 Mo. App. 539, 243 S. W. 257, all of which were, likewise, called to the attention of respondents.

(b) By holding that the benefit certificate is an "old line" contract of insurance, the opinions are in direct conflict with, and respondents have failed to follow, the last controlling decisions of the Supreme Court of Missouri in the cases of *Claudy v. Royal League*, 259 Mo. 92 and *Westerman v. Supreme Lodge*, 196 Mo. 670, both of which were called to the attention of respondents in relator's brief and in its motion for rehearing.

(c) By holding that relator was estopped to assert that the inclusion of the "payments to cease after 20 years" clause in the benefit certificate was ultra vires, the opinions are in conflict with, and respondents failed or refused to follow, the last controlling decisions of the Supreme Court of Missouri in the cases of *Grafeman v. Bank*, 290 Mo. 311, 235 S. W. 435; *State ex rel. v. Sevier*, 335 Mo. 369, 73 S. W. (2d) 361, 373; *State ex rel. v. Hamilton*, 303 Mo. 302, 317, 260 S. W. 466; *Bales v. Perry*, 51 Mo. 449, 453; *Spurlock v. Sproule*, 72 Mo. 503, 510; *Burke v. Adams*, 80 Mo. 504, 514; *Bramell v. Adams*, 146 Mo. 70, and *Biggs v. Modern Woodmen*, 336 Mo. 379, 82 S. W. (2d) 898, all of which were called to respondent's attention in relator's brief and in its motion for rehearing.

8. That, there is attached hereto, and presented herewith, a true copy of the opinions of respondents marked Exhibit A and Exhibit B, respectively, a true copy of relator's motion for rehearing and suggestions in support thereof, marked Exhibit C, and a copy of the record entry of the Kansas City Court of Appeals, overruling relator's motion for rehearing, marked Exhibit D.

Wherefore, relator prays this court to issue its writ of certiorari directed to respondents in their official capacity

aforesaid, requiring them, and each of them, to recall and stay their mandate, and to certify to this court a full, true and complete transcript of the record of said court in the case of William F. Bolin et al., Respondents, v. The Sovereign Camp of the Woodmen of the World, a Corporation, Appellant, No. 18928, and to have the same returned to this court on or before the first day of May, 1938, term of this court, in order that this court may adjudge the legality of said rulings.

Rainey T. Wells, Wright & Ford, Harding, Murphy
& Tucker, Attorneys for Relator.

[fol. 242]

EXHIBIT D

IN THE KANSAS CITY COURT OF APPEALS, OCTOBER TERM, 1937

No. 18928

WILLIAM F. BOLIN et al., Respondents,

vs.

SOVEREIGN CAMP, WOODMEN OF THE WORLD, Appellant

Now at this day, the Court having considered and fully understood the appellant's motion for rehearing and modification herein, doth consider and adjudge that the said motion be, and the same is hereby overruled. (Add'l. op. fld).

STATE OF MISSOURI, set:

I, Renick Jones, Clerk of the Kansas City Court of Appeals do hereby certify that the above and foregoing is a full, true and complete copy of the order of Court, on January 10, 1938, overruling appellant's motion for rehearing and modification as the same appears of record and on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the Kansas City Court of Appeals at office in Kansas City, Missouri, this 20th day of January, 1938.

Renick Jones, Clerk. (Seal.)

[fol. 243] And thereafter and on the 25th day of February, 1938, the following proceedings were had and entered of record in said cause, to-wit:

STATE OF MISSOURI at the Relation of THE SOVEREIGN CAMP
OF THE WOODMEN OF THE WORLD, Relator,

VS.

HOPKINS B. SHAIN, EWING C. BLAND and ROBERT M. REYNOLDS,
Judges of the Kansas City Court of Appeals,
Respondents

CERTIORARI

Now at this day, on consideration of the petition for a writ of certiorari herein to the said respondents, it is ordered by the Court here that the said petition be, and the same is hereby denied.

STATE OF MISSOURI, sct:

I, E. F. Elliott, Clerk of the Supreme Court of the State of Missouri, do hereby certify that the foregoing pages are a full, true and correct copy of the proceedings in a case entitled State of Missouri, at the relation of The Sovereign Camp of the Woodmen of the World, relator, against Hopkins B. Shain, Ewing C. Bland and Robert M. Reynolds, Judges of the Kansas City Court of Appeals, respondents, No. 3^d 922, as fully and completely as the same appear of record and on file in my office.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Supreme Court, at my office in the City of Jefferson, State aforesaid, this 4th day of March, 1938.

E. F. Elliott, Clerk, Supreme Court of Missouri.
(Seal of the Supreme Court of Missouri.)

[fol. 244] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 31, 1938

The petition herein for a writ of certiorari to the Kansas City Court of Appeals, State of Missouri, is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 42,497. Missouri, Kansas City Court of Appeals. Term No. 31. The Sovereign Camp of the Woodmen of the World, petitioner, vs. William F. Bolin, Edward E. Bolin and Samuel A. Bolin, et al. Petition for a writ of certiorari and exhibit thereto. Filed May 7, 1938. Term No. 31, O. T., 1938.

(6466)

FILE COPY

Office - Supreme Court H. 2

FILED

MAY 7 1938

CHARLES ELMORE GROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1937.

NO. [REDACTED] 31

THE SOVEREIGN CAMP OF THE WOODMEN OF THE
WORLD, A Corporation,
Petitioner,

VS.

WILLIAM F. BOLIN, EDWARD E. BOLIN, SAMUEL A.
BOLIN, JOHN O. BOLIN, SARAH B. CAMPBELL,
JAMES D. BOLIN, FLAINE SCOTT, PERRY
BOLIN, AND DEAN BOLIN,

Respondents.

James Bolin, Frank Bolin & Keith Bolin

PETITION FOR WRIT OF CERTIORARI AND
BRIEF IN SUPPORT THEREOF

✓ RAINY T. WELLS
Of Omaha, Nebraska
✓ M. E. FORD
Of Maryville, Missouri
✓ JOHN T. HARDING
✓ DAVID A. MURPHY
R. CARTER TUCKER,
JOHN MURPHY,
CHARLES B. TURNEY,
Of Kansas City, Missouri
Attorneys for Petitioner

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Supreme Court of the United States

OCTOBER TERM, 1937.

NO.

THE SOVEREIGN CAMP OF THE WOODMEN OF THE
WORLD, A Corporation,
Petitioner,

VS.

WILLIAM F. BOLIN, EDWARD E. BOLIN, SAMUEL A.
BOLIN, JOHN O. BOLIN, SARAH B. CAMPBELL,
JAMES D. BOLIN, ELAINE SCOTT, PERRY
BOLIN, AND DEAN BOLIN,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE
KANSAS CITY COURT OF APPEALS OF
THE STATE OF MISSOURI

To the Honorable Charles Evans Hughes, Chief Justice of
the United States, and the Associate Justices of the
Supreme Court of the United States:

The petitioner, The Sovereign Camp of The Woodmen of the World, alleges and respectfully shows to this Honorable Court:

Summary Statement of the Matter Involved.

Petitioner is a fraternal beneficiary association duly created, organized and existing under the laws of the State of Nebraska with a lodge system, a ritualistic form of work and representative form of government. It has no capital stock and transacts its business without profit for the sole and mutual benefit of its members by providing in its constitution and by-laws for the payment of death benefits to the beneficiary designated in benefit certificates issued by it only to its members. The funds from which such benefits are paid by petitioner are derived solely from dues, assessments and monthly payments collected from, and paid by, its members (R. 40, 41, 61-87, 92-95). The full extent of petitioner's power to pay death benefits under benefit certificates issued by it is expressed in Article 3 of its Articles of Incorporation in the following language (R. 93):

"To create a fund from which, upon reasonable and satisfactory proofs of the death of a member in good standing holding a beneficiary certificate, there shall be paid the proceeds of one assessment upon the *surviving* members, from whom the same can be legally collected a sum not to exceed Three Thousand Dollars (\$3,000). * * * (Italics ours.)

In the year 1895, (R. 41) a by-law was adopted by petitioner (hereinafter referred to as Section 82 of the by-laws of petitioner) which provided as follows (R. 71):

"Sec. 82. Life Membership Certificates shall be

issued by the Sovereign Camp to all members of the Woodmen of the World, under the following conditions:

"When the certificate of a member who has entered the Order between the ages of 16 and 33 has been in force and binding for 30 years, or of members entering between 34 and 42 years of age when the certificate has attained the age of 25 years, and all members entering the Order over 43 years of age when the certificate has attained the age of 20 years; and that after the said Life Membership Certificate has been issued the Life Member shall not be liable for Camp dues, assessments or General Fund dues. That the proper officers of the Sovereign Camp shall issue quarterly, assessment calls upon all members of the Woodmen of the World, regardless of jurisdiction or nation, for a sufficient amount to pay all death claims accruing during the previous three months, for said Life Members who have died during said time, under this provision and that any Life Member visiting a Camp shall be greeted with the honors of the Order and shall be seated at the right of the Consul Commander, and shall also be entitled to wear a Life Membership badge, to be designed and prescribed by the Sovereign Camp."

On June 3, 1896, while the above quoted Section 82 of petitioner's by-laws was thought to be lawfully in effect, petitioner issued to one Pleasant Bolin of Arkoe, Nodaway County, Missouri, who was then 47 years of age, its benefit certificate No. 8955 providing for the payment of certain periodical dues by the member, and for the payment by the association of death benefits in the amount of \$1,000 and burial expenses in the amount of \$100 to the beneficiaries named therein, which certificate, pursuant to the provisions of the aforesaid Section 82 of petitioner's by-laws, contained, in the upper right-hand corner thereof, the words

"payments to cease after 20 years" and in the body thereof, language providing, in substance, that the certificate was liable to forfeiture if the member failed to pay the dues required to be paid under said benefit certificate or to comply with the constitution and by-laws of petitioner then in force, or thereafter to be adopted, to which constitution and by-laws the issuance and acceptance of the certificate was expressly made subject (R. 33-37, 48). Said benefit certificate was substantially identical to many other such certificates issued by petitioner to its members pursuant to the provisions of the aforesaid Section 82 of its by-laws (R. 52).

In the year 1899, said Section 82 (then Section 68, R. 75) of petitioner's by-laws was repealed by the requisite majority of its members (R. 87, 88).

Thereafter, Prince L. Trapp, being the holder of a benefit certificate issued by petitioner containing the "payments to cease after 20 years" clause, instituted in the District Court of Douglas County, Nebraska, a suit " * * * for and on behalf of himself and all others similarly situated * * *" to compel the association to issue to him a paid-up certificate under the provisions of the aforesaid Section 82 of petitioner's by-laws. The petition alleged, in substance, that he became a member of petitioner in reliance upon the "payments to cease" feature of the benefit certificate, and that he paid all dues and assessments assessed by petitioner against him for more than 20 years. Petitioner filed an answer alleging that under its charter the aforesaid Section 82 of its by-laws and the "payments to cease after 20 years" clause contained in the benefit certificate were *ultra vires* and void, to which a reply was filed alleging, among other things, that petitioner was

“ * * * forever estopped from denying the validity of its contract * * * ” Judgment was rendered in favor of petitioner in the lower court, from which an appeal was taken to the Supreme Court of Nebraska, the highest judicial tribunal in the State of Nebraska, where the judgment in favor of petitioner was affirmed (R. 101-139). *Trapp v. Sovereign Camp of the Woodmen of the World*, 102 Neb. 562, 168 N. W. 191. The Court's decision in the *Trapp* case was based entirely upon its previous decision in *Haner v. Grand Lodge A. O. U. W. of Nebraska*, 102 Neb. 563, 168 N. W. 189 (R. 137), where it was held that the enactment of a by-law similar, in principle, with the aforesaid Section 82 of petitioner's by-laws by a fraternal beneficiary association created under the identical laws of the State of Nebraska under which petitioner was created was *ultra vires* and void, and that in a suit to compel the association to issue a paid-up certificate, the association was not estopped to assert that the enactment of the by-law was *ultra vires*.

Pleasant Bolin, to whom the benefit certificate involved herein was issued, paid to petitioner all dues and assessments required to keep the certificate in force for a period of more than twenty years (R. 39, 44, 45, 48, 49, 89), after which he ceased to pay any dues or assessments whatever, and as a result of his failure to make such payments, petitioner treated him as automatically suspended from membership and his rights under the aforesaid benefit certificate as forfeited (R. 44, 45, 48, 49, 89).

On July 18, 1933, said Pleasant Bolin died (R. 31) and thereafter there was commenced in the Circuit Court of Nodaway County, Missouri, by the beneficiaries named in the aforesaid benefit certificate (respondents herein), against petitioner, a suit entitled “*William F. Bolin et al v.*

Sovereign Camp of the Woodmen of the World" to recover of petitioner the sum of \$1100 as benefits under the aforesaid benefit certificate (R. 7). In said action, petitioner, contending that the enactment of the aforesaid Section 82 of its by-laws, and the inclusion of the "payments to cease after 20 years" clause in the benefit certificate were each *ultra vires* and void, and that the benefit certificate had been forfeited for non-payment of dues, duly pleaded in its answer the provisions of its Articles of Incorporation, the decision and judgment of the Supreme Court of Nebraska in *Trapp v. Sovereign Camp of the Woodmen of the World*, *supra*, and invoked the full faith and credit provision of the Constitution of the United States (R. 11-25). Respondents filed a reply to petitioner's answer, alleging, among other things, that petitioner was estopped to assert that the enactment of said by-law and the inclusion of the "payments to cease after 20 years" clause in the benefit certificate were *ultra vires* of petitioner and invalid (R. 25-27). Upon the trial of said case, judgment was rendered against petitioner in the amount of \$1100 (R. 143, 144). After an unsuccessful motion for a new trial (R. 144-147), petitioner duly appealed to the Supreme Court of Missouri (R. 148, 149), where the cause was transferred to the Kansas City Court of Appeals (R. 170-173) *Botin et al. v. Sovereign Camp, W. O. W.*, 338 Mo. 618, 98 S. W. (2d) 681.) The Kansas City Court of Appeals thereafter filed an opinion affirming said judgment (R. 174-192) and upon rehearing held pursuant to a motion therefor filed by petitioner, filed a subsequent opinion also affirming said judgment (R. 192-194, 195, 199-216). Thereafter, petitioner filed a subsequent motion for rehearing (R. 196-199) which was overruled by said Kansas City Court of Appeals and an additional opinion filed (R. 199, 217-219). Thereafter, petitioner filed in the

Supreme Court of Missouri its petition for a writ of certiorari, which was denied (R. 221-228), and petitioner's right of appeal from said judgment in the State of Missouri was thereby exhausted.

In its opinion, said Kansas City Court of Appeals, in affirming said judgment against petitioner, held, in substance, that the benefit certificate in question, having been applied for, issued and accepted in the State of Missouri, and the dues provided for thereunder having been paid in the State of Missouri, the rights of the beneficiaries thereunder are to be determined under the laws of the State of Missouri; that since at the time of the issuance of said benefit certificate there was no law in the State of Missouri, under which a fraternal beneficiary association could become licensed to do business in the State of Missouri, petitioner did business at that time in the State of Missouri under its general insurance laws; that since it was neither pleaded nor proven that petitioner had thereafter complied with the laws of the State of Missouri whereunder its certificates previously issued would be exempt from the application of the general insurance laws, the benefit certificate in question was an "old line" contract of insurance under the laws of the State of Missouri; that neither it, nor the trial court were bound, under Article IV, Section 1 of the Constitution of the United States, to accord full faith and credit to petitioner's charter, nor to the aforesaid decision and judgment of the Supreme Court of Nebraska, the highest judicial tribunal in that state, in *Trapp v. Sovereign Camp of the Woodmen of the World*, *supra*, the law of the State of Missouri being controlling, and that under the law of the State of Missouri, the inclusion in the benefit certificate of the "payments to cease after 20 years" clause was not *ultra vires* of petitioner, and that if it were, petitioner would be estopped to assert it (R. 199-216, 217-219).

Reasons Relied On for Allowance of the Writ.

Said opinion of the Kansas City Court of Appeals fails to accord full faith and credit under Article IV, Section 1. of the Constitution of the United States to petitioner's charter, and to the decision and judgment of the Supreme Court of Nebraska, the highest judicial tribunal of that state, in *Trapp v. Sovereign Camp of the Woodmen of the World, supra*, in which it was held that under petitioner's charter, the enactment of the aforesaid Section 82 of petitioner's by-laws and the inclusion of the "payments to cease after 20 years" clause in a benefit certificate issued by petitioner were *ultra vires* and void, and that petitioner was not estopped to assert the defense of *ultra vires* nor the invalidity of the benefit certificate. Said opinion of the Kansas City Court of Appeals, by failing, as it does, to accord full faith and credit to petitioner's charter and to said decision and judgment of the Supreme Court of Nebraska is violative of the provisions of Article IV, Section 1, of the Constitution of the United States and is in direct conflict with the decisions of this Court in the cases of *Supreme Council of the Royal Arcanum v. Green*, 237 U. S. 531, 35 S. Ct. 724, 59 L. Ed. 1089; *Modern Woodmen of America v. Mixer*, 267 U. S. 544, 45 S. Ct. 389, 69 L. Ed. 783; *Sovereign Camp of the Woodmen of the World v. Shelton*, 270 U. S. 628, 46 S. Ct. 207, 70 L. Ed. 769; *Hartford Life Ins. Co. v. Ibs*, 237 U. S. 662, 35 S. Ct. 692, 59 L. Ed. 1165, and *Hartford Life Ins. Co. v. Barber*, 245 U. S. 146, 38 S. Ct. 54, 62 L. Ed. 208.

WHEREFORE, petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Kansas City Court of Appeals of Missouri, commanding that Court to certify to and

send to this Court for its review and determination, on a day certain to be named therein a full and complete transcript of the record and all proceedings in the case entitled on its docket, "*William F. Bolin et al., Respondents, v. Sovereign Camp of the Woodmen of the World, Appellant, No. 18928*" and that the judgment of said Kansas City Court of Appeals may be reviewed by this Honorable Court, and that petitioner may have such other and further relief in the premises as to this Honorable Court shall seem proper, and petitioner will ever pray, etc.

The Sovereign Camp of the Woodmen of the World, Petitioner.

By:

Reuben T. Wells

Of Omaha, Nebraska

M. E. Ford

Of Maryville, Missouri

John T. Harding

David C. Murphy

R. Carter Tucker

John Murphy

Charles B. Turney

Of Kansas City, Missouri

Attorneys for Petitioner

Supreme Court of the United States

OCTOBER TERM, 1937.

NO. _____

THE SOVEREIGN CAMP OF THE WOODMEN OF THE
WORLD, A Corporation,
Petitioner,

VS.

WILLIAM F. BOLIN, EDWARD E. BOLIN, SAMUEL A.
BOLIN, JOHN O. BOLIN, SARAH B. CAMPBELL,
JAMES D. BOLIN, ELAINE SCOTT, PERRY
BOLIN, HOMER BOLIN, FRANK BOLIN,
KEITH BOLIN AND DEAN BOLIN,
Respondents.

BRIEF IN SUPPORT OF PETITION FOR
WRIT OF CERTIORARI

I.

OPINION BELOW.

The opinion of the Kansas City Court of Appeals is not yet officially reported but appears in Volume 112, South-

Western Reporter (Second Series), at page 582, and in the record at pages 199 to 216. The additional opinion filed upon rehearing appears in Volume 112, Southwestern Reporter (Second Series), at page 592, and the record at pages 217 to 219.

II.

JURISDICTION.

(a) The jurisdiction of this Court is invoked by petition for writ of certiorari under Section 237 of the Judicial Code, as amended by Act of February 13, 1925 (Title 28, U. S. C. A. Sec. 344b, and on the authority of *Roche v. McDonald*, 275 U. S. 449, 48 S. Ct. 142, 72 L. Ed. 365.

(b) The judgment sought to be reversed was rendered by the Circuit Court of Nodaway County, Missouri, on May 1, 1934 (R. 143, 144). Petitioner's motion for a new trial was overruled on May 28, 1934 (R. 149). The judgment of the Kansas City Court of Appeals and its first opinion affirming the judgment below was rendered June 14, 1937 (R. 174). Motion for rehearing was filed on June 24, 1937 (R. 192), and was sustained on July 7, 1937 (R. 195). The second opinion of the Kansas City Court of Appeals filed after rehearing, was rendered November 15, 1937 (R. 195, 196, 199). A subsequent motion for rehearing was filed November 24, 1937 (R. 196), and was overruled January 10, 1938 (R. 199), and an additional opinion filed (R. 217). Petition for writ of certiorari was filed in the Supreme Court of Missouri on January 31, 1938 (R. 221), and was denied February 25, 1938 (R. 228).

The petition prays that the writ of certiorari be directed

to the Kansas City Court of Appeals on the authority of *Western Union Telegraph Co. v. Priester*, 276 U. S. 252, 48 S. Ct. 234, 72 L. Ed. 555.

III.

STATEMENT OF THE CASE.

Under the heading "Summary Statement of the Matter Involved" in the petition, *ante*, pages 2 to 7, is a full statement of the case, and in the interest of brevity, the statement is not here repeated.

IV.

SPECIFICATION OF ERROR.

The Kansas City Court of Appeals erred in refusing to accord full faith and credit under Article IV, Section 1 of the Constitution of the United States to petitioner's charter and to the decision and judgment of the Supreme Court of Nebraska, the highest judicial tribunal in that state, in the case of *Trapp v. Sovereign Camp of the Woodmen of the World*, 102 Neb. 562, 168 N. W. 191 (R. 101-139) announcing the legal significance of petitioner's charter as between petitioner and its members, and holding that the enactment of Section 82 of petitioner's by-laws, and the inclusion of the "payments to cease after 20 years" clause in its benefit certificates were each *ultra vires* of petitioner and void, and that in an action brought by a member to recover under the provisions of said by-law and the "payments to cease after 20 years" clause, petitioner was not estopped from asserting the invalidity of said by-law and said "payments to cease after 20 years" clause.

SUMMARY OF ARGUMENT

(a) The judgment of the Supreme Court of Nebraska was a final, valid adjudication that under petitioner's charter the enactment of Section 82 of petitioner's by-laws and the inclusion of the "payments to cease after 20 years" clause in its benefit certificates were *ultra vires* of petitioner and *invalid* and that petitioner is not estopped to assert their invalidity in a suit brought to enforce the provisions of said by-law and said "payments to cease after 20 years" clause.

Trapp v. Sovereign Camp of the Woodmen of the World, 102 Neb. 562, 168 N. W. 191 (R. 101-139);

Haner v. Grand Lodge, A. O. U. W., 102 Neb. 563, 168 N. W. 189.

(b) The aforesaid judgment of the Supreme Court of Nebraska having been rendered in a suit brought for the benefit of a class to which Pleasant Bolin, the deceased, belonged, and being a final adjudication of a controversy as to which petitioner could stand in judgment for its members, is *res adjudicata* and binding upon respondents and should have been accorded full faith and credit under Article IV, Section 1 of the Constitution of the United States. If it is not considered binding upon respondents in a personal sense, it, nevertheless, announces the legal significance of petitioner's charter which, as thus interpreted, should have been accorded full faith and credit in the court below.

Supreme Council of Royal Arcanum v. Green, 237

U. S. 531, 35 S. Ct. 724, 59 L. Ed. 1089;
Modern Woodmen of America v. Mixer, 267 U. S.
 544, 45 S. Ct. 389, 69 L. Ed. 783;
Hartford Life Ins. Co. v. Ibs, 237 U. S. 662, 35 S.
 Ct. 692, 59 L. Ed. 1165;
Hartford Life Ins. Co. v. Barber, 245 U. S. 146,
 38 S. Ct. 54, 62 L. Ed. 208;
Sovereign Camp of the Woodmen of the World v.
Shelton, 270 U. S. 628, 46 S. Ct. 207, 70 L. Ed.
 769.

(c) The decision of the court below on the question of
 esoppel was, of itself, a denial of full faith and credit
 to petitioner's charter and the Nebraska judgment because
 (1) the decision was reached by application of the laws of
 the state of Missouri instead of the laws of the state of
 Nebraska, and (2) the issue of estoppel was finally ad-
 judged by the Nebraska judgment in favor of petitioner.

See cases cited under (b), *supra*.
Mills v. Duryee, 7 Cranch 481, 3 L. Ed. 411;
Hampton v. McConnell, 3 Wheat. 234, 4 L. Ed. 378;
Hancock Nat'l Bank v. Farnum, 176 U. S. 640, 20
 S. Ct. 506, 44 L. Ed. 619;
Converse v. Hamilton, 224 U. S. 243, 32 S. Ct. 415,
 56 L. Ed. 749;
Roche v. McDonald, 275 U. S. 449, 48 S. Ct. 142, 72
 L. Ed. 365;
American Express Co. v. Mullins, 212 U. S. 311,
 29 S. Ct. 381, 53 L. Ed. 525;
Fauntleroy v. Lum, 210 U. S. 230, 28 S. Ct. 641,
 52 L. Ed. 1039;
United States v. California & Oregon Land Co.,
 192 U. S. 355, 24 S. Ct. 266, 48 L. Ed. 476.

(d) Application of the Missouri insurance laws by the court below was, of itself, a denial of full faith and credit to petitioner's charter and to the Nebraska judgment because (1) under petitioner's charter as interpreted by the Supreme Court of Nebraska the issuance of the limited payment certificate was none the less, *ultra vires* and invalid whether petitioner did, or did not, comply with the Missouri insurance laws, and (2) it clothed petitioner with powers, and subjected it to burdens in the state of Missouri which do not exist in the state under the laws of which petitioner was created, nor elsewhere.

Christmas v. Russell, 5 Wall. 290, 18 L. Ed. 475;

Roche v. McDonald, 275 U. S. 449, 48 S. Ct. 142,
72 L. Ed. 365;

Kenny v. Supreme Lodge, 252 U. S. 411, 40 S. Ct.
371, 64 L. Ed. 638, 10 A. L. R. 716;

Fauntleroy v. Lum, 210 U. S. 230, 28 S. Ct. 641,
52 L. Ed. 1039;

Modern Woodmen of America v. Mixer, 267 U. S.
544, 45 S. Ct. 389, 69 L. Ed. 783;

Hanover Fire Ins. Co. v. Carr 272 U. S. 494, 47
S. Ct. 179, 71 L. Ed. 372.

VI.

ARGUMENT

The Kansas City Court of Appeals erred in refusing to accord full faith and credit under Article IV, Section 1, of the Constitution of the United States to petitioner's charter, and to the decision and judgment of the Supreme Court of Nebraska, the highest judicial tribunal in that state, in the case of *Trapp v. Sovereign Camp of the Woodmen of the*

World, 102 Neb. 562, 168 N. W. 191, (R. 101-139), announcing the legal significance of petitioner's charter as between the petitioner and its members, and holding that the enactment of Section 82 of petitioner's by-laws, and the inclusion of the "payments to cease after 20 years" clause in its benefit certificates were each *ultra vires* of petitioner and void, and that in an action brought by a member to recover under the provisions of said by-law and the "payments to cease after 20 years" clause, petitioner was not estopped from asserting the invalidity of said by-law and said "payments to cease after 20 years" clause.

(a) *The Nebraska Judgment.*

The entire record in the case of *Trapp v. Sovereign Camp of the Woodmen of the World*, 102 Neb. 562, 168 N. W. 191, authenticated under the Acts of Congress, was introduced in evidence in the instant case and appears in the record before this Court at pages 101 to 139.

In that case Prince L. Trapp, being the holder of a benefit certificate issued by petitioner containing the "payments to cease after 20 years" clause, instituted in the District Court of Douglas County, Nebraska a suit to compel petitioner to issue to him a paid-up certificate under the provisions of Section 82 of its by-laws. The petition alleged, in substance, that he became a member of the association in reliance upon the "payment to cease" feature of the benefit certificate and that he had paid all dues and assessments assessed by petitioner against him for more than twenty years. His action was intended to be a class suit, as is illustrated by the following quotation from his petition:

"Comes now the plaintiff, for and on behalf of

himself and all others similarly situated, and for cause of action * * *."

Petitioner filed an answer alleging that the "payments to cease after 20 years" clause contained in the benefit certificate was *ultra vires* and void.

The plaintiff filed a reply alleging, among other things, that petitioner was " * * * forever estopped from denying the validity of its contract * * *."

In the trial court judgment was rendered for petitioner from which an appeal was taken to the Supreme Court of Nebraska, where the judgment was affirmed.

The Supreme Court of Nebraska said: (1. c. 191 N. W. Rep.)

"The main questions presented have been determined adversely to plaintiff in the case of *Haner v. Grand Lodge, A. O. U. W.*, No. 20280, decided June 15, 1918, and on the authority thereof the judgment of the district court is affirmed."

The case of *Haner v. Grand Lodge, A. O. U. W.*, referred to in the opinion in the *Trapp* case, is reported in 102 Neb. 563, 168 N. W. 189. In that case, the defendant, a fraternal beneficiary association created under the identical statutes of the State of Nebraska under which petitioner was created, enacted a by-law which provided:

"Section 170. *Surrender Value*—Any member in good standing, seventy years or more of age, may make application for a final card as provided in these laws, and upon complying with the conditions necessary to the granting of the same, shall be entitled to be paid from the beneficiary fund, at the time of the

issuance of the same, a sum equal to all beneficiary assessments paid by him to the Grand Lodge of Nebraska, and a sum equal to all emergency fund payments made by him since the adoption of Article 29 of the Grand Lodge by-laws in 1905, together with four per cent. simple interest on each of said sums, said interest to be figured on the payments made each year from January 1st after the same were paid."

Plaintiff, having attained the age of 70 years, sought to compel the defendant association to make payment of the sum provided for in the above quoted by-law.

The Supreme Court of Nebraska held that under the statutes of the State of Nebraska, the enactment of the by-law was *ultra vires* of the association and void, and that the association was not estopped to assert the invalidity of the by-law. The Court said: (1. c. 190 N. W. Rep.)

"The ruling of the trial court is based upon the theory that section 170 of the by-laws was *ultra vires* and void under the statutes regulating the defendant association. The statutes cited read in part as follows:

"A fraternal beneficiary association is hereby declared to be a corporation, society or voluntary association, formed or organized and carried on for the sole benefit of its members and their beneficiaries and not for profit. Each such beneficiary association shall have a lodge system, with ritualistic form of work, and a representative form of government.' Rev. St. 1913, Sec. 3295.

"Such society shall make provision for the payment of benefits in case of death, and may make provision for the payment of benefits in case of sickness, temporary or permanent physical disability, either as a result of disease, accident or old age: Provided, the period in life at

which payment of physical disability benefits on account of age commences shall not be under seventy years.' Rev. St. 1913, Sec. 3296.

"Is section 170 of the by-laws *ultra vires* and wholly void? The statute gives power to bestow aid upon members who are sick or disabled, as a result of disease, accident or old age, but provides that benefits shall not accrue because of old age until the member has reached the age of 70 years. It does not give the right to confer such benefits upon a member merely because he reaches the age of 70 years; physical disability must be coupled with his years. The section of the by-laws forming the basis of this action fixes a definite surrender value without regard to the physical condition of the member. It is alleged that plaintiff is under permanent physical disability 'by reason of having reached the age of 70 years.' It is a matter of common knowledge that the attainment of this age does not necessarily work disability, and this statement in the petition adds nothing to the provisions of section 170 of the by-laws. Under the terms of this by-law disability is of no consequence; the time for settlement is fixed and definite without regard to the member's physical condition. The statute of Kansas governing this class of associations is essentially the same as ours. It has there been held that the statute does not authorize such payment. *Kirk v. Fraternal Aid Ass'n.* 95 Kan. 707, 149 Pac. 400. In support of this holding there are a number of citations which we do not here set out, but they may be found in the original report.

"It is argued that the association is estopped to deny the validity of this section of the by-laws. The association was operating under the statute at the time plaintiff became a member. Plaintiff, as a member of the association, was a party to the adoption of this by-law. He does not stand in the same relation to the association as does the holder of a policy

in a standard life insurance company, but occupies the dual position of insurer and insured. *The association could not directly write a contract for this class of insurance and the law will not permit the association to evade the statute and do by indirection what it may not directly do. 22 Cyc. 1417.*" (Italics ours)

(b) The Question of Full Faith and Credit.

In the course of its opinion in the instant case, the Kansas City Court of Appeals said: (R. 211)

"The certificate being a Missouri contract, whether its act was ultra vires or not is to be determined by the laws of this state, regardless of any holding of the Supreme Court of Nebraska."

Further in the opinion, the court said: (R. 214)

"The certificate in question being a Missouri contract, it necessarily follows that such a contract is governed by Missouri law only. Therefore, the statutes or decisions of the State of Nebraska are not involved; and the 'full faith and credit' provision of the Federal Constitution is not involved."

Contrary to the decision of the Kansas City Court of Appeals in the instant case, this court has uniformly held that the relative rights and duties between a fraternal association and its members must be determined by the application of the laws of the state under which the association was created and to which it owes its existence and that the charter of the association and the decisions of the highest judicial tribunal of that state announcing the legal significance thereof, are entitled to be accorded full faith and credit under Article IV, Sec. 1 of the Constitution of the

United States notwithstanding the fact that the particular certificate in controversy was issued in a foreign state.

A case typical of those above referred to, and one which we believe to be controlling of the instant case, is that of *Supreme Council of the Royal Arcanum v. Green*, 237 U. S. 531, 35 S. Ct. 724, 59 L. Ed. 1089.

In that case, a fraternal association created under the laws of the Commonwealth of Massachusetts enacted a by-law by which its membership dues were increased. Shortly after the increased rate went into effect, sixteen members of the association filed a bill in the Supreme Judicial Court of Massachusetts against the association in their own behalf and in behalf of all other certificate holders to vacate and set aside the by-law on the ground that the increase was *ultra vires* of the association and violative of their contract rights. The Massachusetts court decided that the increase complained of was valid, impaired no contract right and was entitled to be enforced. *Reynolds v. Supreme Council, Royal Arcanum*, 192 Mass. 150.

Subsequently, Samuel Green, a certificate holder, commenced in the courts of the State of New York a suit against the association in which the validity of the increase was assailed. It was decided in the Court of Appeals of the State of New York where the case was reviewed on appeal, that since the certificate was a New York contract, the courts of New York were not bound to give full faith and credit to the Massachusetts decision.

On a writ of error issued to the New York Court, this

court held that the New York Court was bound by the decision and judgment of the Massachusetts court. In the course of the opinion, it was said: (l. c. 541, 542)

"It is not disputable that the corporation was exclusively of a fraternal and beneficiary character and that all of the rights of complainant concerning the assessment to be paid to provide for the Widows' and Orphans' Benefit Fund had their source in the constitution and by-laws and therefore their validity could be alone ascertained by a consideration of the constitution and by-laws. This being true, it necessarily follows that resort to the constitution and by-laws was essential unless it can be said that the rights in controversy were to be fixed by disregarding the source from which they arose and by putting out of view the only considerations by which their scope could be ascertained. Moreover as the charter was a Massachusetts charter and the constitution and by-laws were a part thereof, adopted in Massachusetts, having no other sanction than the laws of that state, it follows by the same token that those laws were integrally and necessarily the criterion to be resorted to for the purpose of ascertaining the significance of the constitution and by-laws. *Indeed, the accuracy of this conclusion is irresistably manifested by considering the intrinsic relation between each and all the members concerning their duty to pay assessments and the resulting indivisible unity between them in the fund from which their rights were to be enjoyed. The contradiction in terms is apparent which would rise from holding on the one hand that there was a collective and unified standard of duty and obligation on the part of the members themselves and the corporation, and saying on the other hand that the duty of members was to be tested isolatedly and individually by resorting not to one source of authority applicable to all but by applying many divergent, variable and conflicting criteria.*

* * * *And from this it is certain that when reduced to their last analysis the contentions relied upon in effect destroy the rights which they are advanced to support, since an assessment which was one thing in one state and another in another, and a fund which was distributed by one rule in one State and by a different rule somewhere else, would in practical effect amount to no assessment and no substantial sum to be distributed. It was doubtless not only a recognition of the inherent unsoundness of the proposition here relied upon, but the manifest impossibility of its enforcement which has led courts of last resort of so many States in passing on questions involving the general authority of fraternal associations and their duties as to subjects of a general character concerning all their members to recognize the charter of the corporation and the laws of the State under which it was granted as the test and measure to be applied."* (Italics ours.)

On the question of the effect to be given to the decision in the Massachusetts case, Green not being a party thereto, it was said: (l. c. 544, 545.)

"The controlling effect of the law of Massachusetts being thus established and the error committed by the court below in declining to give effect to that law and in thereby disregarding the demands of the full faith and credit clause being determined, we come to consider whether the increase of assessment which was complained of was within the powers granted by the Massachusetts charter or conflicted with the laws of that State. Before doing so, however, we observe that the settled principles which we have applied in determining whether the controversy was governed by the Massachusetts law clearly make manifest how inseparably what constitutes the giving of full faith and credit to the Massachusetts judgment is involved in the consideration of the application of the laws of that State and

therefore, as we have previously stated, how necessarily the express assertion of the existence of a right under the Constitution of the United States to full faith and credit as to the judgment was the exact equivalent of the assertion of a claim of right under the Constitution of the United States to the application of the laws of the State of Massachusetts. We say this because if the laws of Massachusetts were not applicable, the full faith and credit due to the judgment would require only its enforcement to the extent that it constituted the thing adjudged as between the parties to the record in the ordinary sense, and on the other hand, if the Massachusetts law applies, the full faith and credit due to the judgment additionally exacts that the right of the corporation to stand in judgment as to all members as to controversies concerning the power and duty to levy assessments must be recognized, the duty to give effect to the judgment in such cases being substantially the same as the duty to enforce the judgment." (Italics ours.)

The court further said: (l. c. 546.)

"Coming then to give full faith and credit to the Massachusetts charter of the corporation and to the laws of that State to determine the powers of the corporation and the rights and duties of its members, there is no room for doubt that the amendment to the by-laws was valid if we accept, as we do, the significance of the charter and of the Massachusetts law applicable to it as announced by the Supreme Judicial Court of Massachusetts in the *Reynolds Case*. And this conclusion does not require us to consider whether the judgment *per se* as between the parties, was not conclusive in view of the fact that the corporation for the purposes of the controversy as to assessments was the representative of the members."

In the case of *Modern Woodmen of America v. Mixer*, 267 U. S. 544, 45 S. Ct. 389, 69 L. Ed. 783, the beneficiary under a certificate issued by an Illinois fraternal society sought recovery thereunder in the Nebraska courts on the ground that the member to whom the certificate was issued had disappeared and had not been heard from for more than ten years. The society had enacted a by-law which provided, in substance, that long continued absence of a member, unheard of, did not give a right to recover on a benefit certificate until after the life expectancy of the member had expired. This by-law had been held valid and binding upon the member by the Supreme Court of Illinois in a case to which neither the absent member nor the beneficiary were a party.

The certificate under which recovery was sought was issued in South Dakota prior to the adoption of the aforesaid by-law.

It was held that the Nebraska Court was bound to give full faith and credit to the judgment of the Illinois court. Mr. Justice Holmes said: (l. c. 551.)

"The indivisible unity between the members of a corporation of this kind in respect of the fund from which their rights are to be enforced and the consequence that their rights must be determined by a single law, is elaborated in *Supreme Council of the Royal Arcanum v. Green*, 237 U. S. 531, 542, 35 S. Ct. 724, 59 L. Ed. 1089, L. R. A. 1916A, 771. *The act of becoming a member is something more than a contract, it is entering into a complex and abiding relation, and as marriage looks to domicile membership looks to and must be governed by the law of the State granting the incorporation. We need not consider what other States may refuse to do, but we deem it established that they*

cannot attach to membership rights against the Company that are refused by the law of the domicil."
(Italics ours.)

Other cases which demonstrate that full faith and credit should have been accorded to petitioner's charter and to the aforesaid decision and judgment of the Supreme Court of Nebraska are *Hartford Life Ins. Co. v. Ibs*, 237 U. S. 662, 35 Sup. Ct. 692, 59 L. Ed. 1165, *Hartford Life Ins. Co. v. Barber*, 245 U. S. 146, 38 Sup. Ct. 54, 62 L. Ed. 208, and *Sovereign Camp of the Woodmen of the World v. Shelton*, 270 U. S. 628, 46 S. Ct. 207, 75 L. Ed. 769.

We think it is clear that the *Trapp* case, *supra*, was a class suit and that it involved a controversy as to which petitioner was entitled to stand in judgment for all of its members holding limited payment certificates and that, accordingly, the judgment rendered in favor of petitioner is, for either or both reasons, binding upon, and *res judicata* as to respondents. But regardless of whether or not it is considered binding upon respondents in a personal sense for either of such reasons, it, nevertheless, announces the legal significance of petitioner's charter which, under the decisions of this court above referred to, is entitled to be accorded full faith and credit, as thus interpreted, in the courts of every state in the nation. If, therefore, respondents could not recover in the courts of the State of Nebraska, and we think it is clear that they could not, then it follows, we think, that neither could they recover in the courts of the State of Missouri without violating the full faith and credit provisions of the Constitution. To hold otherwise would fasten upon membership in petitioner in one state rights different from those existing in other states, a result which was condemned by this court in the foregoing cases.

(c) *The Question of Estoppel.*

In the instant case, the Kansas City Court of Appeals decided that even if it was *ultra vires* of petitioner to enact Section 82 of its by-laws and to include in its benefit certificates the "payments to cease after 20 years" clause, petitioner was, nevertheless, estopped under the laws of the State of Missouri, which were held to be applicable, to assert the invalidity of the by-law and the "payments to cease after 20 years" clause. The Court did not decide that petitioner was estopped under the Nebraska law. In the course of its opinion, the Court said: (R. 208.)

"Whether such act was *ultra vires* its powers acting in either capacity is a question to be determined by the laws of Missouri. * * * Likewise, the question of estoppel."

"In the additional opinion filed upon overruling petitioner's last motion for rehearing, the Court indicated that under certain facts its decision might have been different, and then stated: (R. 219.)

"If such a case be presented to this court, we assert the right of this court to decide all matters of *ultra vires* and estoppel by the laws of Missouri."

Since the Court's decision on the question of estoppel, is based upon the laws of Missouri, and not upon the laws of Nebraska, the decision in this respect alone is a denial of full faith and credit to petitioner's charter and to the judgment in the *Trapp* case wherein the legal significance of petitioner's charter is announced. *Supreme Council of Royal Arcanum v. Green, supra*; *Modern Woodmen of America*

v. *Mixer, supra*; *Hartford Life Ins. Co. v. Ibs, supra*; *Hartford Life Ins. Co. v. Barber, supra*.

Moreover, the question of estoppel was put directly in issue in the *Trapp* case, *supra*, and was decided in favor of petitioner. It is, of course, settled by repeated decisions of this Court that the *Trapp* judgment is 'entitled to be given in the courts of Missouri the same credit, validity and effect that would be given to it in the courts of Nebraska, and that only such defenses as could be made to it in the courts of Nebraska may be made in the courts of Missouri. (*Mills v. Duryee*, 7 Cranch 481, 3 L. Ed. 411; *Hampton v. McConnell*, 3 Wheat. 234, 4 L. Ed. 378; *Hancock Nat'l Bank v. Farnum*, 176 U. S. 640, 20 S. Ct. 506, 44 L. Ed. 619; *Converse v. Hamilton*, 224 U. S. 243, 32 S. Ct. 415, 56 L. Ed. 749; *Roche v. McDonald*, 275 U. S. 449, 48 S. Ct. 142, 72 L. Ed. 365) and that it is conclusive as to all the *media concludendi*. *American Express Co. v. Mullins*, 212 U. S. 311, 29 S. Ct. 381, 53 L. Ed. 525; *Fauntleroy v. Lum*, 210 U. S. 230, 28 S. Ct. 641, 52 L. Ed. 1039; *United States v. California & Oregon Land Co.*, 192 U. S. 355, 24 S. Ct. 266, 48 L. Ed. 476.

It is clear we think, that the decision of the Kansas City Court of Appeals on the question of estoppel cannot be considered an independent, non-federal ground of sufficient breadth to sustain the judgment. As heretofore pointed out, the mere application of estoppel in the instant case adversely to petitioner, whether under the laws of the State of Missouri or under the laws of the State of Nebraska, denies to petitioner's charter and to the *Trapp* judgment the credit, validity and effect to which they are entitled under the full faith and credit provisions of the

Constitution. We need not cite authority for the proposition that a judgment of a state court is not based upon an independent non-federal ground of sufficient breadth to sustain it if it is, itself, violative of some provision of the Constitution.

(d) *The Missouri Insurance Laws.*

The opinion of the Kansas City Court of Appeals raises the question of whether or not the failure of petitioner to plead and prove that it had complied with the statutes of the State of Missouri entitling it to do business in the State of Missouri as a fraternal association, can clothe the petitioner with powers which it otherwise could not exercise, and in effect deny to its charter and to the *Trapp* judgment the full faith and credit to which they would otherwise be entitled.

In dealing with this question, it is again noted that the laws of the State of Missouri are applied, and not the laws of the State of Nebraska. This is, of itself, a denial of full faith and credit, unless violation of the Missouri insurance laws excuses the courts of Missouri from giving effect to the full faith and credit provisions of the Constitution.

As early as the year 1866 this court decided in the case of *Christmas v. Russell*, 5 Wall 290, 18 L. Ed. 475, that a statute enacted in one state cannot operate to impair the credit validity and effect which otherwise would be given to a judgment rendered in a sister state. The rule thus announced has been steadfastly adhered to in the cases of *Roche v. McDonald*, 275 U. S. 449, 48 S. Ct. 142, 72 L. Ed. 365; *Kenny v. Supreme Lodge*, 252 U. S. 411, 40 S. Ct. 371,

64 L. Ed. 638, 10 A. L. R. 716; *Fayntleroy v. Lum*, 210 U. S. 230, 28 S. Ct. 641, 52 L. Ed. 1039.

It is not disputed but that a state may impose conditions upon foreign corporations doing business within its territorial limits, but, as stated by this court in *Modern Woodmen of America v. Mixer*, 267 U. S. 544, 45 S. Ct. 389, 69 L. Ed. 783, " * * * They cannot attach to membership right against the company that are refused by the law of the domicile." Nor may a state exact of a foreign corporation a sacrifice of its constitutional rights as a condition to its engaging or continuing in business within the state. *Hanover Fire Ins. Co. v. Carr*, 272 U. S. 494, 47 S. Ct. 179, 71 L. Ed. 372. The decision of the Kansas City Court of Appeals in the instant case is in the very teeth of the decisions of this court in the two cases last cited.

Neither may the application which has been given to the Missouri insurance laws be considered an independent non-federal ground for the court's decision of sufficient breadth to sustain it. If full faith and credit is accorded to petitioner's charter and the *Trapp* judgment, petitioner was without power to enact Section 82 of its by-laws and to include in its benefit certificates the "payments to cease after 20 years" clause, regardless of whether or not petitioner is a fraternal association or an "old line" company, and regardless of whether or not the certificate in question was fraternal certificate or an "old line" contract of insurance. But if full faith and credit is denied to petitioner's charter and to the *Trapp* judgment and some other law applied as was done in the instant case in the court below petitioner's corporate powers are thereby broadened and it becomes within its power to do that which it could not do under the laws of the state of its creation.

As previously stated, this result, and the method employed to reach it, was condemned in *Modern Woodmen of America v. Mixer, supra*, and clearly gives rise to a federal question over which this court may exercise jurisdiction.

(f) *Conclusion.*

In conclusion, it is submitted that the Kansas City Court of Appeals erred in refusing to accord full faith and credit to petitioner's charter and to the judgment in the *Trapp* case, wherein the legal significance of petitioner's charter is announced. To hold otherwise clothes petitioner with powers in the State of Missouri which it may not exercise elsewhere, and necessarily results in an advantage to certificate holders who are residents of the State of Missouri over certificate holders who are residents of other states. Moreover, it imposes upon petitioner a burden with respect to certificates which it has issued in the State of Missouri not embraced within its charter, which necessarily results in an impairment of the rights of the holders of its certificates who are residents of other states.

It is further submitted that the error of the Kansas City Court of Appeals in refusing to accord full faith and credit to petitioner's charter and to the *Trapp* judgment fully justifies the issuance of this court's writ of certiorari.

Respectfully submitted,

RAINEY T. WELLS

Of Omaha, Nebraska

M. E. FORD

Of Maryville, Missouri,

JOHN T. HARDING

DAVID A. MURPHY

R. CARTER TUCKER,

JOHN MURPHY,

CHARLES B. TURNEY,

Of Kansas City, Missouri

Attorneys for Petitioner

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U.S. DEPT. OF JUSTICE

CRIM. DIV.

Supreme Court of the United States

APPEAL FROM THE DISTRICT COURT OF THE DISTRICT OF KANSAS

No. 11

**THE DIVISION CASE OF THE WORKMEN OF THE
WORLD, A CORPORATION, PETITIONER**

**WILLIAM F. BOLIN, EDWARD E. BOLIN, SAMUEL A.
BOLIN ET AL. RESPONDENTS**

**APPEAL FROM THE DISTRICT COURT OF THE DISTRICT OF KANSAS
IN REPLY TO THE PETITION OF THE DISTRICT COURT OF KANSAS**

APPEAL FROM THE DISTRICT COURT OF THE DISTRICT OF KANSAS

**Robert T. White,
of Omaha, Nebraska,
James T. Hamann,
David A. Murray,
of Kansas City, Missouri,
Attorneys for Petitioner.**

**W. F. Bolin,
of Maryville, Missouri,
E. E. Bolin,
James Murray,
Samuel A. Bolin,
of Kansas City, Missouri,
Attorneys for Respondents.**

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a final adjudication of a controversy as to which petitioner could stand in judgment for its members, is res adjudicata and binding upon respondents, and should have been accorded full faith and credit in the court below

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- (d) If the Nebraska judgment is not considered res adjudicata and binding upon respondents in a personal sense, it nevertheless announces the legal significance of petitioner's charter under the laws of Nebraska, and the charter, as thus interpreted, was entitled to have been accorded full faith and credit in the court below

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- (e) The decision of the court below on the question of estoppel was, of itself, a denial of full faith and credit to petitioner's charter and the Nebraska judgment because: (1) the decision was reached by application of the laws of Missouri instead of the laws of Nebraska; and (2) the issue of estoppel was finally adjudicated by the Nebraska judgment in favor of petitioner

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- (f) The opinion of the Supreme Court of Nebraska was the construction of a fraternal charter. It held that under said charter Section 82 and the "payments to cease" clause were ultra vires and void. It also held that the plea of estoppel was not available. It is, therefore, wholly immaterial whether under the Missouri law the certificate is labeled fraternal or old line. If the constitutional question is present, the plea of estoppel, under the Missouri law,

must be absent. They are antagonistic and cannot abide together. The fact that no license was required of the association in Missouri at the time the certificate was written in no sense affects the constitutional mandate

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(g) Application of the Missouri insurance laws by the court below changed and impaired the substantive rights of petitioner established by the laws of Nebraska and its charter and the Nebraska judgment were denied the credit, validity and effect to which they were entitled under the full faith and credit provision of the constitution

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Supreme Court of the United States

OCTOBER TERM, 1938.

No. 31.

THE SOVEREIGN CAMP OF THE WOODMEN OF THE
WORLD, A CORPORATION, PETITIONER,

VS.

WILLIAM F. BOLIN, EDWARD E. BOLIN, SAMUEL A.
BOLIN ET AL., RESPONDENTS.

ON WRIT OF CERTIORARI TO THE KANSAS CITY COURT OF
APPEALS OF THE STATE OF MISSOURI.

I.

REFERENCES TO TRANSCRIPT OF RECORD.

In order to provide a sufficient number of copies of the transcript of record, it was necessary, after issuance of the writ of certiorari, to order additional copies printed. The page numbers of the reprinted copies do not correspond to those of the original copies. All references herein are made to pages of the reprinted copies. A comparative index appears in the front of the reprinted copies.

II.

OPINION BELOW.

The opinion of the Kansas City Court of Appeals is not yet officially reported, but appears in Volume 112, South Western Reporter, Second Series, at page 582, and in the record at pages 143 to 160. The additional opinion filed upon overruling the last motion for rehearing appears in Volume 112, South Western Reporter, Second Series, at page 592, and in the record at pages 161 to 163.

III.

JURISDICTION.

(a) Section 237b of the Judicial Code as amended by Act of February 13, 1925 (Title 28 U. S. C. A., Section 344b), is believed to sustain the jurisdiction of this court.

(b) The judgment sought to be reversed was rendered by the Circuit Court of Nodaway County, Missouri, on May 1, 1934 (Rec. 97, 98). Petitioner's motion for a new trial was overruled on May 28, 1934 (Rec. 100). Petitioner duly appealed to the Supreme Court of Missouri, where the cause was transferred, without decision on the merits, to the Kansas City Court of Appeals (339 Mo. 618, Rec. 113-117). The judgment of the Kansas City Court of Appeals and its first opinion affirming the judgment below were rendered June 14, 1937 (Rec. 118). Motion for rehearing was filed on June 24, 1937 (Rec. 136); and was sustained on July 7, 1937 (Rec. 139). The second opinion of the Kansas City Court of Appeals filed after rehearing, likewise affirming the judgment below, was rendered

November 15, 1937 (Rec. 139, 140, 143). A subsequent motion for rehearing was filed November 24, 1937 (Rec. 140), and was overruled January 10, 1938 (Rec. 143) and an additional opinion filed (Rec. 161). Petition for writ of certiorari was filed in the Supreme Court of Missouri, the court of last resort in the State of Missouri, on January 31, 1938 (Rec. 165), and was denied February 25, 1938 (Rec. 172). On March 15, 1938, the Kansas City Court of Appeals entered an order by which its mandate was stayed pending proceedings for writ of certiorari in this court (Rec. 164, 165). On May 7, 1938, petitioner filed in this court its petition for writ of certiorari, which was granted on May 31, 1938.

(c) Action was instituted in the Circuit Court of Nodaway County, Missouri, to recover under a beneficiary certificate issued by petitioner, a Nebraska fraternal beneficiary association, to Pleasant Bolin, of Nodaway County, Missouri (Rec. 4-7). The certificate, containing, among other language, the clause "Payments to cease after 20 years" (Rec. 22), was issued pursuant to a bylaw enacted by petitioner which provided, in substance, that after the member had paid dues and assessments for twenty years, the certificate would become fully paid (Rec. 47, Section 82). Dues and assessments necessary to keep the certificate in force had been paid for more than twenty years (Rec. 29, 62). Petitioner contending that, under its charter, the bylaw and the limited payment feature of the beneficiary certificate were *ultra vires* and invalid, and that by his default after expiration of the twenty-year period, the deceased had ren-

dered his certificate void, invoked a judgment of the Supreme Court of Nebraska rendered in the case of *Trapp v. Sovereign Camp of the Woodmen of the World*, 102 Neb. 562, in which it was adjudicated that under petitioner's charter the bylaw providing for limited payment certificates and the limited payment feature of certificates issued thereunder were *ultra vires* of petitioner and invalid (Rec. 71-94), and contended that said judgment and petitioner's charter were entitled to be accorded full faith and credit under Article IV, Section 1, of the Constitution of the United States. Petitioner had pleaded in its answer (Rec. 7-16) and had introduced in evidence (Rec. 64, 67, 71-94) its Articles of Incorporation, the applicable statutes of Nebraska in force at the time of the issuance of the beneficiary certificate and the record and judgment of the Supreme Court of Nebraska in *Trapp v. Sovereign Camp of the Woodmen of the World*, *supra*.

It was held in the trial court, and later on appeal, that because the certificate was a Missouri contract, the rights of respondents were to be determined under the laws of Missouri, and not under the laws of Nebraska, and that neither petitioner's charter, nor the aforesaid Nebraska judgment, were entitled to be accorded full faith and credit under Article IV, Section 1 of the Constitution (Rec. 143-160, 161-163).

(d) It is believed that the cases of *Roche v. McDonald*, 275 U. S. 449; *Aetna Life Insurance Co. v. Dunken*, 266 U. S. 389; *Modern Woodmen of America v. Mixer*, 267 U. S. 544 and *Supreme Council of the Royal Arcanum v.*

Green, 237 U. S. 531, sustain the jurisdiction of this court. The petition for writ of certiorari requested that the writ be directed to the Kansas City Court of Appeals on the authority of *Western Union Telegraph Co. v. Priester*, 276 U. S. 252.

In view of the refusal of the Supreme Court of Missouri to assume jurisdiction (339-Mo. 618, Rec. 113-117) and its denial of the petition for writ of certiorari filed by petitioner (Rec. 172), the Kansas City Court of Appeals was the highest court in the State of Missouri in which a decision could be had on the merits of the instant case. Constitution of Missouri, Article VI as amended by Amendment of 1884, Sections 1914, 1915, Mo., R. S., 1929, *Mergenthaler Linotype Co. v. Davis et al.*, 251 U. S. 256.

IV.

STATEMENT.

In January, 1891, petitioner was incorporated under the general laws of Nebraska as a fraternal beneficiary association, without capital stock, for social, fraternal and benevolent purposes (Rec. 64-67). Article 3 of its Articles of Incorporation provided as follows (Rec. 65):

"The object of this Order and these articles incorporating is to organize and establish a social, fraternal, beneficiary and benevolent order by combining and associating together white male persons of sound bodily health, exemplary habits and good moral character between the ages of sixteen and sixty years, with power in the Sovereign Executive Council to hereafter change the ages of admission to eighteen years and not over fifty, or fifty-five

years, should it be deemed to the interest of the Order to do so.

"To create a fund from which, upon reasonable and satisfactory proofs of the death of a member in good standing holding a beneficiary certificate, there shall be paid the proceeds of one assessment upon the surviving members, from whom the same can be legally collected a sum not to exceed Three Thousand Dollars (\$3,000.00) to the designated beneficiary of said deceased member according to the terms of the beneficiary certificate, or if none survive, to such beneficiary as the conditions of the laws of said Order shall provide."

In furtherance of the objects expressed in its articles of incorporation, petitioner adopted a constitution and by-laws providing, among other things, for the creation and establishment, from dues and assessments paid by its members, of a "Beneficiary Fund," from which death benefits would be paid to the beneficiaries designated in beneficiary certificates issued by petitioner to its members, and for the establishment of camps or lodges in various localities to receive applications for membership and to carry on the social, benevolent and fraternal objects of the order (Rec. 41-49).

In the year 1895, a bylaw was adopted by petitioner (hereinafter referred to as Section 82) which provided as follows (Rec. 47):

"Sec. 82. Life Membership Certificates shall be issued by the Sovereign Camp to all members of the Woodmen of the World, under the following conditions:

"When the certificate of a member who has entered the Order between the ages of 16 and 33 has

been in force and binding for 30 years, or of members entering between 34 and 42 years of age when the certificate has attained the age of 25 years, and all members entering the Order over 43 years of age when the certificate has attained the age of 20 years; and that after the said Life Membership Certificate has been issued the Life Member shall not be liable for Camp dues, assessments or General Fund dues. That the proper officers of the Sovereign Camp shall issue quarterly, assessment calls upon all members of the Woodmen of the World, regardless of jurisdiction or nation, for a sufficient amount to pay all death claims accruing during the previous three months, for said Life Members who have died during said time, under this provision and that any Life Member visiting a Camp shall be greeted with the honors of the Order and shall be seated at the right of the Consul Commander, and shall also be entitled to wear a Life Membership badge, to be designed and prescribed by the Sovereign Camp."

On June 3, 1896 (Rec. 22, 23), while Section 82 was thought to be lawfully in effect, petitioner issued to one Pleasant Bolin, of Nodaway County, Missouri, who was then 47 years of age (Rec. id:) and who had made application therefor to the lodge or camp established at Arkoe, Missouri (Rec. 35-41), its beneficiary certificate No. 8955, providing for the payment of camp or lodge dues and monthly assessments of ninety cents by the member, and for the payment by petitioner from its "Beneficiary Fund" of death benefits in the amount of \$1,000.00 and \$100.00 monument fund to the beneficiaries named therein, which certificate, pursuant to said Section 82, contained in the margin thereof the words "Payments to cease after 20 years" (hereinafter called "payments to cease clause"), and contained in the body thereof language

providing, in substance, that the certificate would become void if the member failed to pay the dues and assessments required to be paid under said beneficiary certificate, or to comply with the constitution and bylaws of petitioner then in force or thereafter to be adopted, to which the issuance and acceptance of the certificate was expressly made subject (Rec. 22-24).

The beneficiary certificate in question was substantially identical with many other such certificates issued by petitioner to its members pursuant to said Section 82 (Rec. 35).

In the year 1899 said Section 82 (then Section 68, Rec. 50) was legally repealed (Rec. 61).

Thereafter, Prince L. Trapp, being the holder of a beneficiary certificate issued by petitioner pursuant to Section 82 and containing said "payments to cease" clause, instituted against petitioner in the District Court of Douglas County, Nebraska, a suit " * * * for and on behalf of himself and all others similarly situated * * *" to compel petitioner to issue to him a paid-up certificate under said Section 82 (Rec. 71). The petition alleged, in substance, that Trapp became a member of the order in reliance upon the limited payment feature of the beneficiary certificate, and that he paid all dues and assessments for more than twenty years (Rec. 72-75). Petitioner filed an answer, alleging in substance, that under its charter said Section 82 and the "payments to cease" clause contained in the beneficiary certificate were *ultra vires* and invalid (Rec. 78-88), to which a reply was filed alleging, among other things, that petitioner was " * * * forever estopped from denying the validity of its con-

tract * * * (Rec. 89). Judgment was rendered in favor of this petitioner in the district court (Rec. 90) from which an appeal was taken to the Supreme Court of Nebraska, where the judgment in favor of this petitioner was affirmed. *Trapp v. Sovereign Camp of the Woodmen of the World*, 102 Neb. 562 (Rec. 92). The court's decision was based upon its previous decision in *Haner v. Grand Lodge, A. O. U. W., of Nebraska*, 102 Neb. 563 (Rec. 93, 94), where it was held that the enactment of a bylaw similar in principle with said Section 82 by a fraternal beneficiary association created under the laws of the State of Nebraska was *ultra vires* and void, and that in a suit to compel the association to issue a paid-up certificate, the association was not estopped to assert the invalidity of the bylaw.

Pleasant Bolin, to whom the beneficiary certificate involved herein was issued, paid to petitioner the dues and assessments required to keep the certificate in force for a period of more than twenty years (Rec. 29, 32, 33, 62), after which he ceased to pay any dues or assessments whatever, and as a result petitioner treated his certificate as having been rendered void by his default and his membership as having been automatically suspended (Rec. 32, 33, 34, 62).

On July 18, 1933, Pleasant Bolin died (Rec. 20), and thereafter there was commenced in the Circuit Court of Nodaway County, Missouri, by the beneficiaries named in the aforesaid beneficiary certificate (respondents herein), against petitioner, a suit entitled "*William F. Bolin et al. v. Sovereign Camp of the Woodmen of the World*" to recover of petitioner said sum of \$1,100.00 as benefits

under said certificate (Rec. 4-7). In said action, this petitioner, contending that the enactment of said Section 82 and the inclusion of the "payments to cease"-clause in the benefit certificate were each *ultra vires* and invalid, and that the certificate on August 1st, 1916, had been rendered void by default in the payment of dues and assessments for July, 1916, duly pleaded in its answer the provisions of its articles of incorporation, the statutes of Nebraska in force at the time of the issuance of the beneficiary certificate, the judgment of the Supreme Court of Nebraska in *Trapp v. Sovereign Camp of the Woodmen of the World, supra*, and invoked the full faith and credit provision of the Constitution of the United States (Rec. 7-16). Respondents filed a reply to this petitioner's answer, alleging, among other things, that this petitioner was estopped to assert that the enactment of said bylaw and the inclusion of the "payments to cease" clause in the margin of the beneficiary certificate were *ultra vires* of petitioner and invalid (Rec. 16-18). Upon the trial of said case, judgment was rendered against petitioner in the amount of \$1,100.00 (Rec. 97, 98). After an unsuccessful motion for a new trial (Rec. 18), petitioner duly appealed to the Supreme Court of Missouri (Rec. 19), where the cause was transferred to the Kansas City Court of Appeals (Rec. 113-117, *Bolin et al. v. Sovereign Camp W. O. W.*, 339 Mo. 618). The Kansas City Court of Appeals thereafter filed an opinion, affirming said judgment (Rec. 118-136) and upon rehearing held pursuant to a motion therefor filed by petitioner (Rec. 136), filed a subsequent opinion also affirming said judgment (Rec. 143-160). Thereafter, petitioner filed a subsequent mo-

tion for rehearing (Rec. 140) which was overruled by said Kansas City Court of Appeals (Rec. 143) and an additional opinion filed (Rec. 161-163). Thereafter, petitioner filed in the Supreme Court of Missouri a petition for a writ of certiorari (Rec. 165), which was denied (Rec. 172).

In its opinion, said Kansas City Court of Appeals, in affirming said judgment against petitioner, held, in substance, that the beneficiary certificate in question, having been applied for, issued and accepted in the State of Missouri, and the dues provided for thereunder having been paid in Missouri, the rights of the beneficiaries thereunder are to be determined by application of the laws of Missouri. In said opinion the court stated, in part (Rec. 158):

"The certificate in question being a Missouri contract, it necessarily follows that such a contract is governed by Missouri law only. Therefore, the statutes or decisions of the State of Nebraska are not involved; and the 'full faith and credit' provision of the Federal Constitution likewise is not involved."

The court further stated (Rec. 155):

"The contention of the defendant that we are concluded, not only as to the character of the *ultra vires* act in question but as to the estoppel, by the holding of the Supreme Court of the State of Nebraska in the Trapp case is not well made. The certificate being a Missouri contract, whether its act was *ultra vires* or not is to be determined by the laws of this state, regardless of any holding of the Supreme Court of Nebraska."

At the time of the issuance of the beneficiary certificate no license was required by the laws of Missouri of a foreign fraternal society^o for doing business in this state, nor was there any Missouri law by which the petitioner could procure a license. The Kansas City Court of Appeals held, in substance, that because of that fact it did business in Missouri under the general insurance laws and that since it was neither pleaded nor proven that the petitioner had complied with after-enacted laws exempting fraternal associations from the general insurance laws, the beneficiary certificate was an "old-line" contract of insurance; that neither it nor the trial court were bound under Article IV, Section 1 of the Constitution of the United States, to accord full faith and credit to petitioner's charter, nor to the aforesaid judgment of the Supreme Court of Nebraska, the highest judicial tribunal in that state, in *Trapp v. Sovereign Camp of the Woodmen of the World*, *supra*, the law of Missouri being controlling, and that under the law of Missouri the issuance of the limited payment certificate by petitioner was not *ultra vires* nor invalid, and that if it were, petitioner would be estopped to assert it (Rec. 143-160, 161-163).

On May 31, 1938, this court granted its writ of certiorari to review the judgment of the Kansas City Court of Appeals (Rec. 173).

V.

ASSIGNMENT OF ERROR.

The Kansas City Court of Appeals erred in refusing to accord full faith and credit under Article IV, Section 1, of the Constitution of the United States to petitioner's charter and to the decision and judgment of the Supreme Court of Nebraska, the highest judicial tribunal in that state, in the case of *Trapp v. Sovereign Camp of the Woodmen of the World*, 102 Neb. 562 (Rec. 71-94), announcing the legal significance of petitioner's charter as between petitioner and its members, and holding that the enactment of Section 82 of petitioner's by-laws, and the inclusion of the "payments to cease after 20 years" clause in its benefit certificate were each *ultra vires* of petitioner and void, and that in an action brought by a member to recover under the provisions of said by-law and the "payments to cease after 20 years" clause, petitioner was not estopped from asserting the invalidity of said bylaw and said "payments to cease after 20 years" clause.

VI.

SUMMARY OF ARGUMENT.

(a) The relative rights and duties of petitioner and respondents under the beneficiary certificate in question must be determined by application of the laws of the State of Nebraska, notwithstanding the fact that the certificate was issued and accepted and the dues were paid in the State of Missouri.

Supreme Council of Royal Arcanum v. Green,
237 U. S. 531.

Reynolds v. Supreme Council of the Royal Arcanum, 192 Mass. 150.

Modern Woodmen of America v. Mixer, 267 U. S. 544.

Hartford Life Ins. Co. v. Ibs, 237 U. S. 662.

Hartford Life Ins. Co. v. Barber, 245 U. S. 146.

Head & Amory v. The Providence Insurance Co.,
2 Cranch 127.

Bank of the United States v. Dandridge, 25 U. S. 64.

Canada Southern Railroad Co. v. Gebhard, 109 U. S. 527.

Broderick v. Rosner, 294 U. S. 629.

Dartmouth College v. Woodward, 4 Wheat. 518, 636.

Perrine v. Chesapeake & Delaware Canal Co., 50 U. S. 172, 184.

Relfe v. Rundle, 103 U. S. 222, 226.

Hawkins v. Glenn, 131 U. S. 319, 331, 332.

Hancock Nat'l Bank v. Farnum, 176 U. S. 640.

Waters-Pierce Oil Co. v. Texas, 177 U. S. 28, 44, 45.

Nashua Savings Bank v. Anglo-American Co.,
189 U. S. 221, 229, 230.

Bernheimer v. Converse, 206 U. S. 516, 533.

Converse v. Hamilton, 224 U. S. 243, 260.

Selig v. Hamilton, 234 U. S. 652, 658, 659.

Harrigan v. Bergdoll, 270 U. S. 560, 564.

(b) The judgment of the Supreme Court of Nebraska was a final, valid adjudication that under petitioner's charter, Section 82 and the limited payment provisions of the beneficiary certificates issued pursuant to said bylaw were *ultra vires* of petitioner and invalid, and that petitioner is not estopped to assert their invalidity in a suit based upon said bylaw to enforce the limited payment features of the beneficiary certificate.

Trapp v. Sovereign Camp of the Woodmen of the World, 102 Neb. 562.

Haner v. Grand Lodge, A. O. U. W., 102 Neb. 563.

(c) The aforesaid judgment of the Supreme Court of Nebraska having been rendered in a suit brought for the benefit of a class to which Pleasant Bofin belonged, and being a final adjudication of a controversy as to which petitioner could stand in judgment for its members, is *res adjudicata* and binding upon respondents, and should have been accorded full faith and credit in the court below.

Smith v. Swormstedt, 16 How. 288.

Bernheimer v. Converse, 206 U. S. 516.

Converse v. Hamilton, 224 U. S. 243.

Selig v. Hamilton, 234 U. S. 652.

Broderick v. Rosner, 294 U. S. 629.

Parker v. Luehrmann et al., 126 Neb. 1.

Supreme Council of the Royal Arcanum v. Green,
237 U. S. 531.

Hartford Life Ins. Co. v. Ibs, 237 U. S. 662.

Hartford Life Ins. Co. v. Barber, 245 U. S. 146.

(d) If the Nebraska judgment is not considered *res adjudicata* and binding upon respondents in a personal sense, it nevertheless announces the legal significance of petitioner's charter under the laws of Nebraska, and the charter, as thus interpreted, was entitled to have been accorded full faith and credit in the court below.

Chicago & Alton Railroad v. Wiggins Ferry Co.,
119 U. S. 615.

Supreme Council of the Royal Arcanum v. Green,
237 U. S. 531.

Hartford Life Ins. Co. v. Barber, 245 U. S. 146.

(e) The decision of the court below on the question of estoppel was, of itself, a denial of full faith and credit to petitioner's charter and the Nebraska judgment because (1) the decision was reached by application of the laws of Missouri instead of the laws of Nebraska; and (2) the issue of estoppel was finally adjudicated by the Nebraska judgment in favor of petitioner.

Trapp v. Sovereign-Camp of the Woodmen of the World, 102 Neb. 562.

Haner v. Grand Lodge, A. O. U. W., 102 Neb. 563.

Mills v. Duryee, 7 Cranch 481.

Haxipton v. McConnell, 3 Wheat. 234.

Hancock Nat'l Bank v. Farnum, 176 U. S. 640.

Converse v. Hamilton, 224 U. S. 243.

Roche v. McDonald, 275 U. S. 449.

American Express Co. v. Mullins, 212 U. S. 311.

Fauntleroy v. Lum, 210 U. S. 230.

United States v. California & Oregon Land Co.,
192 U. S. 355.

(f) The opinion of the Supreme Court of Nebraska was the construction of a fraternal charter. It held that under said charter Section 82 and the "payments to cease" clause were *ultra vires* and void. It also held that the plea of estoppel was not available. It is, therefore, wholly immaterial whether under the Missouri law the certificate is labeled fraternal or old line. If the constitutional question is present, the plea of estoppel, under the Missouri law, must be absent. They are antagonistic and cannot abide together. The fact that no license was required of the association in Missouri at the time the certificate was written in no sense affects the constitutional mandate.

Canada Southern Railroad v. Gebhard, 109 U. S. 527, 537.

(g) Application of the Missouri insurance laws by the court below changed and impaired the substantive rights of petitioner established by the laws of Nebraska and its charter and the Nebraska judgment were denied the credit, validity and effect to which they were entitled under the full faith and credit provision of the constitution.

Bradford Electric Light Co. v. Clapper, 286 U. S. 145.

John Hancock Mut. Life Ins. Co. v. Yates, 299 U. S. 178.

Aetna Life Ins. Co. v. Dunken, 266 U. S. 389.

Modern Woodmen of America v. Mixer, 267 U. S. 544.

Hanover Fire Ins. Co. v. Carr, 272 U. S. 494.

Christmas v. Russell, 5 Wall. 290.

Fauntleroy v. Lum, 210 U. S. 230.

Kenny v. Supreme Lodge, 252 U. S. 411.

Roche v. McDonald, 275 U. S. 449.

VII.

ARGUMENT.

(a) The relative rights and duties of petitioner and respondents under the beneficiary certificate in question must be determined by application of the laws of Nebraska, notwithstanding the fact that the beneficiary certificate was issued and accepted and the dues were paid in Missouri.

Since it has been asserted that the court below erred in refusing to accord full faith and credit to the charter of petitioner, a Nebraska corporation, and to a judgment rendered by the Supreme Court of Nebraska in an action in which neither respondents nor Pleasant Bolin were summoned as parties, it is necessary, in order to determine the effect which should be given to the judgment and the charter, to determine whether the law of Nebraska or the law of Missouri is controlling upon the parties.

The necessity for making this determination was stated by Mr. Chief Justice White in the case of *Supreme Council of the Royal Arcanum v. Green*, 237 U. S. 531, 541, in the following language:

"And as what was the due effect to be given to the judgment depended, as we shall hereafter more particularly point out, upon whether the Massachusetts law controlled the parties, since if it did, the judgment would be entitled to one effect, and if it did not, to another effect, it follows that the claim as to constitutional right concerning the judgment also involved deciding whether the Massachusetts law controlled."

In the court below, it was decided that since the beneficiary certificate was issued and accepted in Missouri and the dues were paid in that state, the law of Missouri was controlling in deciding the controversy (Rec. 143-160, 161-163).

In the course of the opinion it was said (Rec. 155):

"The certificate being a Missouri contract, whether its act was *ultra vires* or not is to be determined by the laws of this state, regardless of any holding of the Supreme Court of Nebraska."

Further in the opinion the court said (Rec. 159):

"The certificate in question being a Missouri contract, it necessarily follows that such a contract is governed by Missouri law only. Therefore, the statutes or decisions of the State of Nebraska are not involved; and the 'full faith and credit' provision of the Federal Constitution likewise is not involved."

The full faith and credit provision of the constitution was invoked in the instant case because the beneficiary certificate was issued in Missouri by a Nebraska fraternal association whose powers under its charter had been determined by the Supreme Court of Nebraska.

If petitioner had issued the certificate in Nebraska to a resident of that state, the laws of Nebraska would necessarily have controlled under ordinary principles of the conflict of laws and there would have been no need to have invoked the constitutional provision. If the powers of the association under the Missouri law had been the same as under the Nebraska law, there would have been no need to have raised the constitutional

question. The full faith and credit provision was adopted to meet such diversities as are present in this case. If estoppel under the Missouri law is sustained because of such diversity, then the constitutional provision is a nullity. If the laws of the various states were uniform, the constitutional provision would become obsolete.

In contrast with the decision of the court below, this court has uniformly held that the relative rights and duties between a fraternal association and its members must be determined by application of the laws of the state under which the association was created and to which it owes its existence, notwithstanding the fact that the controversy between the association and its members arises under a beneficiary certificate issued and accepted in a foreign state.

A case typical of those above referred to and one which we believe to be controlling of the instant case is that of *Supreme Council of the Royal Arcanum v. Green*, *supra*. In that case a fraternal association created under the laws of Massachusetts enacted a bylaw by which its membership dues were increased. Shortly after the increased rate went into effect, sixteen members of the association filed a bill in the Supreme Judicial Court of Massachusetts against the association in their own behalf and in behalf of all other certificate holders to vacate and set aside the bylaw on the ground that the increase was *ultra vires* of the association and violative of their contract rights. The Massachusetts court decided that the increase complained of was valid, impaired no contract right, and was entitled to be enforced. *Reynolds v. Supreme Council of the Royal Arcanum*, 192 Mass. 150.

Subsequently, Samuel Green, a certificate holder, commenced in the courts of the State of New York a suit against the association in which the validity of the increase was assailed. It was decided in the court of appeals of the State of New York, where the case was reviewed on appeal, *that since the certificate was a New York contract, the laws of the State of New York were controlling, and that the courts of New York were not bound to apply the law of Massachusetts nor to accord full faith and credit to the charter of the association or the Massachusetts judgment.*

On a writ of error issued to the New York court, this court held, among other things, that under the full faith and credit provisions of the constitution the New York court, in determining the effect to be given to the judgment rendered in Massachusetts and to the charter of the association, was bound to apply the law of Massachusetts. In the course of the opinion, it was said (l. c. 541, 542):

"It is not disputable that the corporation was exclusively of a fraternal and beneficiary character, and that all of the rights of complainant concerning the assessment to be paid to provide for the Widows' and Orphans' Benefit Fund had their source in the constitution and bylaws and therefore their validity could be alone ascertained by a consideration of the constitution and bylaws. This being true, it necessarily follows that resort to the constitution and bylaws was essential unless it can be said that the rights in controversy were to be fixed by disregarding the source from which they arose and by putting out of view the only considerations by which their scope could be ascertained. Moreover, as the charter was a Massachusetts charter and the constitution and bylaws were a part thereof, adopted in Massachu-

setts, having no other sanction than the laws of that state, it follows by the same token that those laws were integrally and necessarily the criterion to be resorted to for the purpose of ascertaining the significance of the constitution and bylaws" (*italics ours*).

Mr. Chief Justice White, discussing the practical effect of applying the law of any other state, said (l. c. 542, 543):

"Indeed, the accuracy of this conclusion is irresistably manifested by considering the intrinsic relation between each and all the members concerning their duty to pay assessments and the resulting indivisible unity between them in the fund from which their rights were to be enjoyed. The contradiction in terms is apparent which would rise from holding on the one hand that there was a collective and unified standard of duty and obligation on the part of the members themselves and the corporation, and saying on the other hand that the duty of the members was to be tested isolatedly and individually by resorting not to one source of authority applicable to all but by applying many divergent, variable and conflicting criteria * * *. And from this it is certain that when reduced to their last analysis the contentions relied upon in effect destroy the rights which they are advanced to support, since an assessment which was one thing in one state and another in another and a fund which was distributed by one rule in one state and by a different rule somewhere else, would in practical effect amount to no assessment and no substantial sum to be distributed. It was doubtless not only a recognition of the inherent unsoundness of the proposition here relied upon, but the manifest impossibility of its enforcement which has led courts of last resort of so many states in passing on questions involving the general authority of fraternal associations and their duties as to subjects of a general character concern-

ing all their members to recognize the charter of the corporation and the laws of the state under which it was granted as the test and measure to be applied."

The question was subsequently presented to this court in *Modern Woodmen of America v. Mixer*, 267 U. S. 544, where the beneficiary, under a beneficiary certificate issued by a fraternal association created under the laws of Illinois, sought recovery thereunder in the courts of Nebraska, on the ground that the member to whom the certificate was issued had disappeared and had not been heard from for more than ten years. The association had enacted a bylaw which provided, in substance, that long continued absence of a member, unheard of, did not give a right to recover on a benefit certificate until after the life expectancy of the member had expired. This bylaw had been held valid and binding upon the members by the Supreme Court of Illinois in a case to which neither the absent member nor the beneficiary were summoned as a party.

The certificate under which recovery was sought was issued in South Dakota prior to the adoption of the aforesaid bylaw.

It was held, among other things, that in determining the validity of the bylaw and the effect to be given to the judgment of the Supreme Court of Illinois, the Nebraska court was bound to apply the laws of Illinois. In the course of the opinion, Mr. Justice Holmes said (1. c. 551):

"The indivisible unity between the members of a corporation of this kind in respect of the fund

from which their rights are to be enforced and the consequence that their rights must be determined by a single law, is elaborated in *Supreme Council of the Royal Arcanum v. Green*, 237 U. S. 531, 542. The act of becoming a member is something more than a contract, it is entering into a complex and abiding relation, and as marriage looks to domicile, membership looks to and must be governed by the law of the state granting the incorporation. We need not consider what other states may refuse to do, but we deem it established that they cannot attach to membership rights against the company that are refused by the law of the domicile. *It does not matter that the member joined in another state*" (italics ours).

To the same effect are the cases of *Hartford Life Ins. Co. v. Ibs*, 237 U. S. 662, and *Hartford Life Ins. Co. v. Barber*, 245 U. S. 146, both involving the effect to be given to a judgment rendered in Connecticut concerning the validity of an increased assessment levied by a mutual insurance company created under the laws of Connecticut. In the former case it was said (l. c. 671):

"It was for the court of the state where the company was chartered and where the fund was maintained to say what was the character of the members' interest—whether they were entitled to have it distributed in cash; or used in paying the next assessment; or retained as a fund for the prompt settlement of claims with the right and duty on the part of the company, as their trustee, to replenish the same by collections from succeeding assessments."

The court, discussing the practical effect of holding otherwise, said (l. c. 670, 671):

"The fund was single, but having been made up of contributions from thousands of members their interest was common. It would have been destruc-

tive of their mutual rights in the plan of mutual insurance to use the mortuary fund in one way for claims of members residing in one state and to use it in another way as to claims of members residing in a different state. To make advances replenished by assessments against those living in Connecticut—and to make advances without the right to replenish against those living in Wisconsin—would have destroyed the very equality the assessment plan was intended to secure. Manifestly the question as to the ownership and proper administration of the fund could not be left at large for collateral decision in every suit on certificates held by those who had failed to pay the assessment.”

Since the year 1804, this court, in cases not differing essentially in principle with the foregoing cases, has recognized and applied the rule that the laws of the state granting the incorporation are controlling in determining the powers of the corporation under its charter, and the relative rights and duties between the corporation and its members.

Thus, in the case of *Head & Amory v. The Providence Insurance Co.*, 2 Cranch 127, decided by this court in the year 1804, Mr. Chief Justice Marshall, considering the law applicable for determining the powers of a corporation, said (l. c. 167) *

“Without ascribing to this body, which, in its corporate capacity, is the mere creature of the act to which it owes its existence, all the qualities and disabilities annexed by the common law to ancient institutions of this sort, it may correctly be said to be precisely what the incorporating act has made it, to derive all its powers from that act, and to be capable of exerting its faculties only in the manner which that act authorizes.

"To this source of its being, then, we must recur to ascertain its powers * * *."

Subsequently, in the case of *Bank of the United States v. Dandridge*, 25 U. S. 64, decided in the year 1827, Mr. Justice Story said (l. c. 68):

"But whatever may be the implied powers of aggregate corporations by the common law, and the modes by which those powers are to be carried into operation, corporations created by statute must depend, both for their powers, and the mode of exercising them, upon the true construction of the statute itself."

Later, in the case of *Canada Southern Railroad Co. v. Gebhard*, 109 U. S. 527, this court said (l. c. 537):

"A corporation 'must dwell in the place of its creation, and cannot migrate to another sovereignty' (*Bank of Augusta v. Earle*, 13 Pet. 588), though it may do business in all places where its charter allows and the local laws do not forbid. *Railroad v. Koontz*, 104 U. S. 12. But, wherever it goes for business it carries its charter, as that is the law of its existence (*Relfe v. Rundle*, 103 U. S. 226), and the charter is the same abroad that it is at home. Whatever disabilities are placed upon the corporation at home it retains abroad, and whatever legislative control it is subjected to at home must be recognized and submitted to by those who deal with it elsewhere. A corporation of one country may be excluded from business in another country (*Paul v. Virginia*, 8 Wall. 168), but, if admitted, it must, in the absence of legislation equivalent to making it a corporation of the latter country, be taken, both by the government and those who deal with it, as a creature of the law of its own country, and subject to all the legislative control and direction that may be properly exercised over it at the place of its creation" (italics ours).

And in the recent case of *Broderick v. Rosner*, 294 U. S. 629, this court, giving consideration to the law applicable in determining the liability of stockholders of a banking corporation found to be insolvent by a court of competent jurisdiction in the state under the laws of which the bank was created, said (l. c. 643):

"The statutory liability sought to be enforced is contractual in character. The assessment is an incident of the incorporation. Thus the subject matter is peculiarly within the regulatory power of New York as the state of incorporation."

To the same effect are the cases of *Dartmouth College v. Woodward*, 4 Wheat. 518, 636; *Perrine v. Chesapeake & Delaware Canal Co.*, 50 U. S. 172, 184; *Relfe v. Rundle*, 103 U. S. 222, 226; *Hawkins v. Glenn*, 131 U. S. 319, 331, 332; *Hancock Nat'l Bank v. Farnum*, 176 U. S. 640; *Waters-Pierce Oil Co. v. Texas*, 177 U. S. 28, 44, 45; *Nashua Savings Bank v. Anglo-American Co.*, 189 U. S. 221, 229, 230; *Bernheimer v. Converse*, 206 U. S. 516, 533; *Converse v. Hamilton*, 224 U. S. 243, 260; *Selig v. Hamilton*, 234 U. S. 652, 658, 659; *Harrigan v. Bergdoll*, 270 U. S. 560, 564.

In the instant case, petitioner, in furtherance of the objects expressed in its articles of incorporation, had enacted a constitution and bylaws providing, among other things, for the creation of a "Beneficiary Fund" for the payment of death benefits to the beneficiaries named in beneficiary certificates issued to its members (Rec. 41-49). Its membership is composed of residents of different states, and in order that each member may be subject to the same duties, and enjoy the same rights with re-

spect to the "Beneficiary Fund" established and maintained for their common benefit, one law, applicable to all, must necessarily be applied to determine their respective rights and duties under the charter and the constitution and bylaws of the order. Since petitioner was created under the laws of Nebraska, it follows, logically, we think, that since the many different and conflicting laws of all of the states in which petitioner may have issued beneficiary certificates cannot be applied without thereby giving to members residing in one state rights denied to members residing in another, nor without subjecting members residing in one state to duties not recognized in other states, the laws of Nebraska, under which petitioner was created, and to which it owes its existence, should, and must, be applied.

In the court below it was determined that the laws of Missouri should be applied to determine the rights of members to whom certificates were issued in Missouri. If the decision of the court below is sound, then it follows that with respect to certificates issued in other states, the laws of those other states must, likewise, be applied. If under the laws of one state the member's certificate is valid, and under the laws of another it is invalid, the equality which should, and must, exist between the members in respect of their enjoyment of the "Beneficiary Fund" and their corresponding duty to maintain it, is completely and wholly destroyed.

If the opinion of the court below is allowed to stand, the following conditions would obtain:

The association has authority in Missouri which is denied it in Nebraska—its home state;

Members have rights in Missouri denied them at home;

Section 82 is valid in Missouri, but void at home;

The certificate means one thing in Missouri and another thing across the fence in Nebraska;

The rights of members depend upon their locality;

There is no basis for levying assessments to pay losses nor for determining the liability of the association;

Forty-eight certificates issued to members in 48 different states might constitute 48 different contracts with different standards of rights, duties and liabilities;

There is no mutuality among the members.

All of which is contrary to the pronouncement of Mr. Justice Holmes in *Modern Woodmen of America v. Mixer*, *supra*, to-wit (1, c. 551):

"We need not consider what other states may refuse to do, but we deem it established that they cannot attach to membership rights against the company that are refused by the law of the domicile."

If the courts of each state should adopt the decision of the Kansas City Court of Appeals, the constitutional provision would go out the window and confusion would come in. Instead of comity, there would be retaliation; instead of full faith and credit, there would be its opposite—no faith and no credit.

(b) The judgment of the Supreme Court of Nebraska was a final, valid adjudication that under petitioner's charter, Section 82 of petitioner's bylaws and the limited payment provisions of its beneficiary certificates issued pursuant to said bylaw were *ultra vires* of petitioner and invalid, and that petitioner is not estopped to assert their invalidity in a suit based upon the provisions of said bylaw to enforce the limited payment features of the beneficiary certificate.

The entire record in the case of *Trapp v. Sovereign Camp of the Woodmen of the World*, 102 Neb. 562, authenticated under the Acts of Congress, was introduced in evidence in the instant case and appears in the record before this court at pages 71 to 94.

In that case Prince L. Trapp, being the holder of a beneficiary certificate issued by petitioner in the year 1895 and containing the "payments to cease after 20 years" clause, instituted, in the District Court of Douglas County, Nebraska, a suit to compel petitioner to issue to him a paid-up certificate under the provisions of Section 82. The petition alleged, in substance, that he became a member of the association in reliance upon the limited payment feature of the beneficiary certificate and that he had paid his dues and assessments for more than twenty years. His action was a class suit, as is illustrated by the following quotation from his petition:

"Comes now the plaintiff, for and on behalf of himself and all others similarly situated, and for cause of action * * * (Rec. 72).

This petitioner filed an answer alleging, in substance, that Section 82 and the limited payment provisions of the beneficiary certificate were *ultra vires* and invalid.

Plaintiff filed a reply alleging, among other things, that petitioner was "* * * forever estopped from denying the validity of its contract * * *" (Rec. 89).

In the trial court judgment was rendered for petitioner from which an appeal was taken to the Supreme Court of Nebraska, where the judgment was affirmed.

The Supreme Court of Nebraska said (Rec. 94, l. c. 563):

"The main questions presented have been determined adversely to plaintiff in the case of *Haner v. Grand Lodge, A. O. U. W.*, No. 20280, decided June 15, 1918, and on the authority thereof the judgment of the district court is affirmed."

In the case of *Haner v. Grand Lodge, A. O. U. W.*, 102 Neb. 563, referred to in the opinion in the Trapp case, the defendant, a fraternal beneficiary association created under the laws of Nebraska, enacted a bylaw which provided (l. c. 564):

"Section 170. SURRENDER VALUE.—Any member in good standing, seventy years or more of age, may make application for a final card as provided in these laws, and upon complying with the conditions necessary to the granting of the same, shall be entitled to be paid from the beneficiary fund, at the time of the issuance of the same, a sum equal to all beneficiary assessments paid by him to the Grand Lodge of Nebraska, and a sum equal to all emergency fund payments made by him since the adoption of Article 29 of the Grand Lodge by-laws in 1905, together with four per cent. simple interest on each of said sums, said interest to be figured on the payments made each year from January 1st after the same were paid."

Plaintiff, having attained the age of 70 years, sought to compel the defendant association to make payment of the sum provided for in the above-quoted bylaw.

The Supreme Court of Nebraska held that the enactment of the bylaw was *ultra vires* of the association and void, and that the association was not estopped to assert the invalidity of the bylaw. The court said (l. c. 565, 566):

"The ruling of the trial court is based upon the theory that Section 170 of the bylaws was *ultra vires* and void under the statutes regulating the defendant association. The statutes cited read in part as follows:

'A fraternal beneficiary association is hereby declared to be a corporation, society or voluntary association, formed or organized and carried on for the sole benefit of its members and their beneficiaries and not for profit. Each such beneficiary association shall have a lodge system, with ritualistic form of work, and a representative form of government.' Rev. St., 1913, Sec. 3295.

'Such society shall make provision for the payment of benefits in case of death, and may make provision for the payment of benefits in case of sickness, temporary or permanent physical disability, either as a result of disease, accident or old age: Provided, the period in life at which payment of physical disability benefits on account of age commences shall not be under seventy years.' Rev. Stat., 1913, Sec. 3296.

"Is Section 170 of the bylaws *ultra vires* and wholly void? The statute gives power to bestow aid upon members who are sick or disabled, as a result of disease, accident or old age, but provides that

benefits shall not accrue because of old age until the member has reached the age of 70 years. It does not give the right to confer such benefits upon a member merely because he reaches the age of 70 years; physical disability must be coupled with his years. The section of the bylaws forming the basis of this action fixes a definite surrender value without regard to the physical condition of the member. It is alleged that plaintiff is under permanent physical disability 'by reason of having reached the age of 70 years.' It is a matter of common knowledge that the attainment of this age does not necessarily work disability, and this statement in the petition adds nothing to the provisions of Section 170 of the bylaws. Under the terms of this bylaw disability is of no consequence; the time for settlement is fixed and definite without regard to the member's physical condition. The statute of Kansas governing this class of associations is essentially the same as ours. It has there been held that the statute does not authorize such payment. *Kirk v. Fraternal Aid Ass'n*, 95 Kan. 707, 149 Pac. 400. In support of this holding there are a number of citations which we do not here set out, but they may be found in the original report.

"It is argued that the association is estopped to deny the validity of this section of the bylaws. The association was operating under the statute at the time plaintiff became a member. Plaintiff, as a member of the association, was a party to the adoption of this bylaw. He does not stand in the same relation to the association as does the holder of a policy in a standard life insurance company, but occupies the dual position of insurer and insured. The association could not directly write a contract for this class of insurance and the law will not permit the association to evade the statute and do by indirection what it may not directly do. 22 Cyc. 1417" (italics ours):

It will be observed that the issues involved in the *Trapp* case with respect to the validity of Section 82 and the validity of the limited payment features of the beneficiary certificate were identical to the issues in the instant case. It was contended in the *Trapp* case, like the instant case, that petitioner was estopped from asserting the invalidity of the bylaw and of the "payments to cease" clause of the beneficiary certificate, but the contention was foreclosed by the Supreme Court of Nebraska in deciding the issues in favor of petitioner. The *Trapp* case involved the identical bylaw that is involved in the instant case and a certificate identical, in substance, to the one involved in the instant case (compare certificate here involved, Rec. 22, with *Trapp* certificate, Rec. 75). It is thus apparent that the bylaw under which respondents' rights in the instant case are predicated and the limited payment feature of the beneficiary certificate have each been held *ultra vires* of petitioner and invalid by the highest judicial tribunal of the state under the laws of which petitioner was created.

(c) The aforesaid judgment of the Supreme Court of Nebraska having been rendered in a suit brought for the benefit of a class to which Pleasant Bolin belonged, and being a final adjudication of a controversy as to which petitioner could stand in judgment for its members, is *res adjudicata* and binding upon respondents, and should have been accorded full faith and credit in the court below.

In an early decision of this court in the case of *Smith v. Swarmstedt*, 16 How. 288; it was said, (l. c. 303):

"Where the parties interested in the suit are numerous, their rights and liabilities are so subject to change and fluctuation by death or otherwise, that it would not be possible, without very great inconvenience, to make all of them parties, and would oftentimes prevent the prosecution of the suit to a hearing. For convenience, therefore, and to prevent a failure of justice, a court of equity permits a portion of the parties in interest to represent the entire body, and the decree binds all of them the same as if all were before the court. The legal and equitable rights and liabilities of all being before the court by representation, and especially where the subject-matter of the suit is common to all, there can be very little danger but that the interest of all will be properly protected and maintained."

The rule announced by this court in the case last cited has been steadfastly adhered to and is recognized and applied in appropriate cases in the courts of substantially all the states of the nation. The rule has frequently been applied in litigation to which a corporation is a party and which involves a subject matter common to all members of the corporation. In such cases it is held that the members of the corporation are represented in the litigation by the corporation and that a judgment or decree rendered in such proceedings, if binding upon the corporation, is, likewise, binding upon the members, except as to matters personal to themselves, although they were not in fact parties to the action. Thus, in a number of cases decided by this court it has been held that a judgment rendered in a suit to determine the liability of stockholders to assessment to which the corporation was a party, is binding upon all of the members

of the corporation, although they had not been summoned, nor were they present as parties to the action. *Hawkins v. Glenn*, 131 U. S. 319; *Bernheimer v. Converse*, 206 U. S. 516; *Converse v. Hamilton*, 224 U. S. 243; *Selig v. Hamilton*, 234 U. S. 652; *Brodérick v. Rosner*, 294 U. S. 629.

The rule was recently recognized and applied by the Supreme Court of Nebraska in the case of *Parker v. Luehrmann et al.*, 126 Neb. 1.

In that case, a bank was closed and a receiver appointed by the District Court of Wayne County, Nebraska. Subsequently, after all of the bank's assets had been liquidated and exhausted, a decree of deficiency was rendered by the court conducting the receivership proceedings and all stockholders of the bank were assessed upon their stock an amount equivalent to the limit prescribed by the Constitution of Nebraska.

Thereafter, the receiver instituted, in the District Court of Cuming County, Nebraska, a suit in equity to recover of the stockholders, who were residents of that county, the amount assessed in the receivership proceedings.

It was contended by the stockholders that the deficiency decree rendered in the receivership proceedings was not binding upon them, for the reason that they were not parties to the action.

The Supreme Court of Nebraska said (l. c. 8, 9):

"The suggestion by the appellants that the order of deficiency of June 15, 1929, was not binding upon the stockholders we believe was not an issue

in the lower court. In any event, the bank was properly in court and the receivership court had full jurisdiction over it and its affairs. The order was binding upon the banking corporation and, therefore, binding upon all its stockholders. *Hawkins v. Glenn*, 131 U. S. 319, 98 S. Ct. 739, 33 L. Ed. 184; *Brownell v. Adams*, *supra*; *Commonwealth Mutual Fire Ins. Co. v. Hayden*, 60 Neb. 636, 83 N. W. 922, 83 Am. St. Rep. 545; *Bernheimer v. Converse*, 206 U. S. 516, 27 S. Ct. 755, 51 L. Ed. 1163; 6 Thompson, Corporations (3d Ed.), 878-885, Secs. 4981-4986."

If the rule announced in the foregoing cases is applicable in the instant case, it follows, we think, that the *Trapp* judgment is *res adjudicata* and binding upon respondents, not only under the decisions of this court, but also under the decisions of the highest court of Nebraska in the case of *Parker v. Luehrmann et al.*, *supra*, and was, accordingly, entitled to have been accorded full faith and credit in the court below.

That the doctrine of the above cases is applicable to the instant case is, we think, fully demonstrated in the case of *Supreme Council of the Royal Arcanum v. Green*, *supra*, where Mr. Chief Justice White, after stating the rule in respect of the right of a corporation, in certain controversies, to stand in judgment for its members, said (l. c. 544):

"That the doctrines thus established, if applicable here, are conclusive is beyond dispute. That they are applicable clearly results from the fact that although the issues here presented as to things which are accidental are different from those which were presented in the cases referred to, as to every es-

sential consideration involved the cases are the same, and the controversy here presented is and has been therefore long since foreclosed" (italics ours).

Further, in the opinion, it was said (l. c. 545):

"* * * if the Massachusetts law applies, the full faith and credit due to the judgment additionally exacts that the right of the corporation to stand in judgment as to all members as to controversies concerning the power and duty to levy assessments must be recognized, the duty to give effect to the judgment in such case being substantially the same as the duty to enforce the judgment."

Another case in point is *Hartford Life Insurance Co. v. Ibs, supra*. In that case Mr. Justice Lamar, discussing the effect of the suit upon members who were not summoned as parties, said (l. c. 671, 672):

"It was for the court of the state where the company was chartered and where the fund was maintained to say what was the character of the members' interest—whether they were entitled to have it distributed in cash; or used in paying the next assessment; or retained as a fund for the prompt settlement of claims with the right and duty on the part of the company, as their trustee, to replenish the same by collections from succeeding assessments. But it was impossible for the company to bring a suit against 12,000 members living in different parts of the United States. It was equally impossible for the 12,000 members to bring a suit against the company to determine the questions involved. Under these circumstances Dresser and thirty other members, holding certificates, brought suit 'in their own behalf and in behalf of all others similarly situated.'

"That allegation, of course, would not by itself determine the character of the proceeding (*Wabash Railroad v. Adelbert College*, 208 U. S. 58). For, in

order that the decree should be binding upon those certificate holders who were not actually parties to the proceeding, it had to appear that Dresser and the other complainants had an interest that was, in fact, similar to that of the other members of the class, and that it was impracticable for all concerned to be made parties. But, when such common interest in fact did exist, it was proper that a class suit should be brought in a court of the state where the company was chartered and where the mortuary fund was kept. The decree in such a suit, brought by the company against some members, as representatives of all, or brought against the company by 30 certificate holders for 'the benefit of themselves and all others similarly situated,' would be binding upon all other certificate holders."

In the case last cited, it was made clear that the fact that the action in Connecticut was different in form from the action in Minnesota rendered the decree of Connecticut court none the less binding with respect to the issues that were actually decided. The court said (1. c. 673):

"It is said, however, that even if the decree, determining the status and use to be made of the mortuary fund, was binding upon members and beneficiaries, it could not be offered in evidence in a suit on a policy of insurance, since the cause of action and the thing adjudged in the two cases was different—one involving the status of the fund and the rights of members therein while the present case related to the right of a beneficiary to recover on a policy and the power of the company to declare a forfeiture. But the defendant's contention that the policy had lapsed, because of the failure of Ibs to pay the assessment, and the plaintiff's reply that the assessment was void because the mortuary fund was sufficient to meet Call 127, raised an issue as

to the right of the insurance company to levy the assessment. On that issue the Connecticut decree was admissible, since it adjudged that the company had the right to make advances to pay claims and ~~could~~ subsequently collect the amount of such claims by an assessment levied as in the present case. Its right so to do having been determined by a court of competent jurisdiction, the decree was binding between the parties or their privies in any subsequent case in which the same right was directly or collaterally involved. For 'even if the second suit is for a different cause of action, the right, question, or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified.' *Southern Pacific Co. v. United States*, 168 U. S. 48-49. So also it was held in *Forsyth v. Hammond* (166 U. S. 518), that 'though the form and causes of action be different, a decision by a court of competent jurisdiction in respect to any essential fact or question in the one action is conclusive between the parties in all subsequent actions.'

The same result as that reached in *Hartford Life Ins. Co. v. Ibs*, *supra*, was reached in the later case of *Hartford Life Ins. Co. v. Barber*, *supra*, involving the same corporation and the same judgment of the Connecticut court.

The controversy adjudicated in the Trapp case was one common to all members of the association because the determination of the authority of the association and the validity of Section 82 and of the limited payment feature of the beneficiary certificate was necessarily a determination, also, of the equality of the rights of the respective members in the "Beneficiary Fund" main-

tained and established by them for their common benefit and of their corresponding duties to pay dues and assessments to keep the fund intact. This being true, it follows, we think, that under the foregoing decisions of this court, as well as under the doctrine obtaining in Nebraska as announced by the Supreme Court of Nebraska in the case of *Parker v. Luehrmann et al.*, *supra*, the *Trapp* judgment was *res adjudicata* and binding upon all of the members of the association and their privies, it being established that under the full faith and credit provision of the constitution, the judgment is entitled to be accorded the same credit, validity and effect in the courts of Missouri that would be accorded to it in the courts of Nebraska. *Mills v. Duryee*, 7 Cranch 481; *Hampton v. McConnell*, 3 Wheat. 234; *Hancock v. National Bank v. Farnum*, 176 U. S. 640; *Roche v. McDonald*, 275 U. S. 449, and cases cited, *supra*.

(d) If the Nebraska judgment is not considered *res adjudicata* and binding upon respondents in a personal sense, it nevertheless announces the legal significance of petitioner's charter under the laws of Nebraska, and the charter, as thus interpreted, was entitled to have been accorded full faith and credit in the court below.

The charter of a corporation is a "public act" of the state under the laws of which the corporation was created within the meaning of Article IV, Section 1 of the Constitution of the United States, and is entitled to be accorded full faith and credit in the courts of every other state in the nation. This was recognized by this court in the case of *Chicago & Alton Railroad v. Wiggins Ferry*

Co., 119 U. S. 615, where Mr. Chief Justice Waite said (1, c. 622):

"The railroad company set up in its answer, as a defense to the action, that it had no authority to make the contract sued on, and in support of this defense put in evidence its Illinois acts of incorporation. Without doubt the constitutional requirement, Article IV, Section 1, that 'full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state,' implies that the public acts of every state shall be given the same effect by the courts of another state that they have by law and usage at home. This is clearly the logical result of the principles announced as early as 1813 in *Mills v. Duryee*, 7 Cranch 481, and steadily adhered to ever since."

It was further recognized in the case last cited that the charter of a corporation created in one state will be given the same effect in the courts of other states that is given to it under the laws of the state where the corporation was created if the laws of the state of creation are pleaded and proven as a fact in the proceedings in the foreign state.

In the later case of *Supreme Council of the Royal Arcanum v. Green*, *supra*, the controversy concerned the power of the association under its charter to levy an increased assessment upon its members, and the association, contending that it had power to levy the assessment, introduced in evidence a judgment of the highest court of Massachusetts under the laws of which the association was created adjudicating that under the charter of the association, the assessment was valid, and contended that the charter of the association, as inter-

preted by the judgment, was entitled to be accorded full faith and credit under Article IV, Section 1, of the Constitution.

This court upheld the contention thus made by the association, and held that the charter, as interpreted by the Massachusetts judgment, was entitled to have been accorded full faith and credit in the courts of New York. In the course of the opinion, it was said (l. c. 546):

"Coming then to give full faith and credit to the Massachusetts charter of the corporation and to the laws of that state to determine the powers of the corporation and the rights and duties of its members, there is no room for doubt that the amendment to the bylaws was valid if we accept, as we do, the significance of the charter and of the Massachusetts law applicable to it as announced by the Supreme Judicial Court of Massachusetts in the *Reynolds Case*. And this conclusion does not require us to consider whether the judgment *per se*, as between the parties, was not conclusive in view of the fact that the corporation for the purposes of the controversy as to assessments was the representative of the members."

The same result was reached in the case of *Hartford Life Ins. Co. v. Barber*, *supra*, where the validity of an assessment on the members of a mutual insurance company was in controversy, and the insurance company having introduced in evidence a judgment of the highest court of Connecticut, under the laws of which the corporation was created, adjudicating the validity of the assessment under the company's charter, it was held that the charter of the company, as interpreted by the Connecticut judgment, was entitled to have been accorded full faith and credit in the court below.

Mr. Justice Holmes, who delivered the opinion of the court, said (l. c. 150):

"The powers given by the Connecticut charter are entitled to the same credit elsewhere as the judgment of the Connecticut court."

In the instant case, petitioner not only pleaded in its answer, but also introduced in evidence, the provisions of its articles of incorporation forming a part of its charter granted under the laws of Nebraska. In accordance with the rule announced in *Chicago & Alton Railroad v. Wiggins Ferry Co.*, *supra*, it likewise pleaded in its answer, and introduced in evidence, a duly authenticated copy of the judgment of the Supreme Court of Nebraska in *Trapp v. Sovereign Camp of the Woodmen of the World*, *supra*, where it was adjudicated that under its charter Section 82 and the limited payment provision of the beneficiary certificates issued thereunder were *ultra vires* of petitioner and invalid. The court below was bound to follow the interpretation placed upon petitioner's charter by the highest court of the state under the laws of which the charter was issued, since the charter, being a "public act" within the meaning of Article IV, Section 1 of the Constitution, was entitled to have been accorded the same credit, validity and effect that would be accorded to it by law or usage in Nebraska. The error of the court below in refusing to accord full faith and credit to petitioner's charter as interpreted by the highest court in Nebraska is, we think, sufficient ground for reversal of the judgment of the court below.

(e) The decision of the court below on the question of estoppel was, of itself, a denial of full faith and credit to petitioner's charter and the Nebraska judgment because: (1) the decision was reached by application of the laws of Missouri instead of the laws of Nebraska; and (2) the issue of estoppel was finally adjudicated by the Nebraska judgment in favor of petitioner.

It was decided in the court below that if it was *ultra vires* of petitioner to enact Section 82 and to issue limited payment certificates thereunder, petitioner was nevertheless estopped under the laws of Missouri, which were held to be applicable, to assert the invalidity of the by-law and the limited payment provisions of the beneficiary certificate. The court did not decide that petitioner was estopped under the Nebraska law. In the course of the opinion, it was said (Rec. 152):

"Whether such act was *ultra vires* its powers, acting in either capacity, is a question to be determined by the laws of Missouri. * * * Likewise, the question of estoppel."

In the additional opinion filed upon overruling petitioner's last motion for rehearing, the court indicated that under certain facts its decision might have been different, and then stated (Rec. 163):

"If such a case be presented to this court, we assert the right of this court to decide all matters of *ultra vires* and estoppel by the laws of Missouri."

Since the decision of the Kansas City Court of Appeals on the question of estoppel is based upon the laws of Missouri, and not upon the laws of Nebraska, the decision in this respect alone is violative of the full faith and credit provision of the Constitution.

But there is another reason why the court's decision on the question of estoppel is violative of the constitutional provision. An examination of the record in *Trapp v. Sovereign Camp of the Woodmen of the World*, *supra*, reveals that the petition filed in that case alleged, in substance, that Trapp became a member of the association in reliance upon the limited payment feature of the beneficiary certificate, and that in the reply to the answer filed by petitioner, that Section 82 and the limited payment provisions of the beneficiary certificate were *ultra vires* and invalid, plaintiff alleged, among other things, that petitioner was "* * * forever estopped from denying the validity of its contract * * *" (Rec. 71-89). It is thus apparent that the question of estoppel was directly in issue in the *Trapp* case, and was foreclosed by the judgment rendered.

This conclusion is made clear by an examination of the opinion of the Supreme Court of Nebraska in *Haner v. Grand Lodge, A. O. U. W.*, *supra*, on which the *Trapp* judgment was based. In the *Haner* case it was said (l. c. 566):

"It is argued that the association is estopped to deny the validity of this section of the bylaws. The association was operating under the statute at the time plaintiff became a member. Plaintiff, as a member of the association, was a party to the adoption of this bylaw. He does not stand in the same relation to the association as does the holder of a policy in a standard life insurance company, but occupies the dual position of insurer and insured. The association could not directly write a contract for this class of insurance and the law will not permit the association to evade the statute and do by indirection

what it may not directly do. 22 Cyc. 1417" (italics ours).

It is settled by repeated decisions of this court that petitioner's charter and the Trapp judgment are entitled to be given in the court of Missouri the same credit, validity and effect that would be given to them in the courts of Nebraska, and that only such defenses to the judgment as could be made to it in the courts of Nebraska may be made in the courts of Missouri. *Mills v. Duryee*, 7 Cranch 481; *Hampton v. McConnell*, 3 Wheat. 234; *Hancock Nat'l Bank v. Farnum*, 176 U. S. 640; *Converse v. Hamilton*, 224 U. S. 243; *Roche v. McDonald*, 275 U. S. 449. It is likewise settled by repeated decisions of this court that a judgment of a foreign state is conclusive as to all of the *media concludendi*. *American Express Co. v. Mullins*, 212 U. S. 311; *Fauntleroy v. Lum*, 210 U. S. 230; *United States v. California & Oregon Land Co.*, 192 U. S. 355.

(f) The opinion of the Supreme Court of Nebraska was the construction of a fraternal charter. It held that under said charter Section 82 and the "payments to cease" clause were *ultra vires* and void. It also held that the plea of estoppel was not available. It is, therefore, wholly immaterial whether under the Missouri law the certificate is labeled fraternal or old line. If the constitutional question is present, the plea of estoppel, under the Missouri law, must be absent. They are antagonistic and cannot abide together. The fact that no license was required of the association in Missouri at the time the certificate was written in no sense affects the constitutional mandate.

One of the reasons assigned by the court below for refusing to accord full faith and credit to the judgment in

Trapp v. Sovereign Camp, supra, was that the Trapp case was unlike the instant case, the former involving a fraternal certificate and the latter an old-line contract of insurance. The opinion further held, in substance, that the fact that no license was required of the association in Missouri at the time the certificate was issued and the further fact that there was no pleading or proof that the society complied with the after-enacted fraternal statutes, changed the certificate into an old-line policy (Rec. 147-149), and because the certificate was old line, the Trapp case was inapplicable. Said opinion is in part as follows (Rec. 159):

"The Trapp case is not on all fours with this case. That case did not involve any question as to the status of the defendant therein being that of a regular old-line insurance company rather than of a fraternal society * * * The certificate in that case (Trapp) was treated as the contract of a fraternal society * * * The question of the *ultra vires* character of the certificate was not discussed, considered or determined from any standpoint other than that it was the contract of a fraternal society * * * That it was *ultra vires* the powers of the defendant society considered as an old-line or regular insurance company * * * was not involved or determined * * * The two cases are not, therefore, alike."

We think that if the full faith and credit provision requires application of the Nebraska law, then it is immaterial whether under the Missouri law the certificate is labelled "old-line" or "fraternal." The basic fact remains that Section 82 and the "payments to cease" clause are *ultra vires* and void in Nebraska and the

courts of Missouri cannot breathe into them the breath of life. Repeating Mr. Justice Holmes in *Canada, Southern Railroad v. Gebhard*, 109 U. S. 527, 1 c. 537:

"Whatever disabilities are placed upon a corporation at home, it retains abroad."

The Supreme Court of Nebraska having placed upon the association a disability under the Nebraska law, the courts of Missouri cannot remove it. Likewise, the presence of the constitutional question in this case renders the plea of estoppel under the Missouri law unavailable. The constitutional mandate cannot be annulled by such a gesture.

While petitioner is a fraternal association an examination of the authorities heretofore cited will show that the full faith and credit defense is not limited to fraternal societies, but applies with equal force to the relationship between other corporations and its members.

(g) Application of the Missouri insurance laws by the court below changed and impaired the substantive rights of petitioner established by the laws of Nebraska and its charter and the Nebraska judgment were denied the credit, validity and effect to which they were entitled under the full faith and credit provision of the constitution.

The court below, after deciding that the law of the State of Missouri was applicable in deciding the controversy between the parties, further decided that since at the time of the issuance of the beneficiary certificate in question there was no statute in the State of Missouri with respect to foreign fraternal beneficiary associations doing business within the state, and that

petitioner had failed to plead or prove compliance with statutes subsequently enacted with respect to exemption of fraternal beneficiary associations from the provisions of the general insurance laws, petitioner did business in the State of Missouri under its general insurance laws, and that the beneficiary certificate, for this reason alone, instead of being the indicia of membership in a fraternal order, was an "old-line" contract of insurance.

It is not necessary to again make reference to the decisions of this court establishing the proposition that a controversy of the kind under consideration must be determined by the laws of the state under which the association was created. That being established, the only remaining question is whether or not a legislative enactment of a state may be applied to change the substantive rights of parties created under the laws of a foreign state and which, beyond question, are applicable to their controversy.

This question has many times been decided by this court.

The case of *Bradford Electric Light Co. v. Clapper*, 286 U. S. 145, was a common-law action for damages brought by an employee against his employer in the courts of New Hampshire. The relationship of master and servant had been created in Vermont, and under the Workmen's Compensation Act of that state a common-law action for damages could not be maintained. Under the Workmen's Compensation Act of New Hampshire, however, such an action could, under certain circumstances, be maintained.

It was contended by the employer that since the relationship of master and servant had been created in Vermont, the laws of that state were applicable, and the Vermont Workmen's Compensation Act being a "public act" within the meaning of the full faith and credit provision of the constitution, was entitled to be accorded full faith and credit in the courts of New Hampshire.

It was contended by the employee that the provisions of the Vermont act were obnoxious to the public policy of New Hampshire, and that consequently the full faith and credit provision of the constitution need not be applied by the courts of New Hampshire; but this court, in deciding the controversy and conceding that under certain circumstances the declared public policy of the state may justify refusal to accord full faith and credit to the public acts, records and judicial proceedings of a foreign state, said (l. c. 160, 161):

"But the company is in a position different from that of a plaintiff who seeks to enforce a cause of action conferred by the laws of another state. The right which it claims should be given effect is set up by way of defense to an asserted liability; and to a defense different considerations apply. Compare *Home Insurance Co. v. Dick*, 281 U. S. 397, 407, 408. A state may, on occasion, decline to enforce a foreign cause of action. In so doing, it merely denies a remedy, leaving unimpaired the plaintiff's substantive right, so that he is free to enforce it elsewhere. But to refuse to give effect to a substantive defense under the applicable law of another state, as under the circum-

stances here presented, subjects the defendant to irremediable liability. This may not be done.

"Compare *Modern Woodmen of America v. Mixer*, 267 U. S. 544, 550, 551; *Aetna Life Insurance Co. v. Dunken*, 266 U. S. 389; *Royal Arcanum v. Green*, 237 U. S. 531. See, also, *Western Union Telegraph Co. v. Brown*, 234 U. S. 542; *Atchison, Topeka & Santa Fe Ry. Co. v. Sowers*, 213 U. S. 55, 69."

In another portion of the opinion, the court, discussing the applicability of the Vermont law, and its controlling effect upon the controversy in the courts of New Hampshire, said (l. c. 158, 159):

"The relation between Leon Clapper and the company was created by the law of Vermont; and as long as that relation persisted its incidents were properly subject to regulation there, for both Clapper and the company were at all times residents of Vermont; the company's principal place of business was located there; the contract of employment was made there; and the employee's duties required him to go into New Hampshire only for temporary and specific purposes, in response to orders given him at the Vermont office. The mere recognition by the courts of one state that parties by their conduct have subjected themselves to certain obligations arising under the law of another state is not to be deemed an extraterritorial application of the law of the state creating the obligation. Compare *Canada Southern Ry. Co. v. Gebhard*, 109 U. S. 527, 536, 537.

"By requiring that, under the circumstances here presented, full faith and credit be given to the public act of Vermont, the Federal Constitution prevents the employee or his representative from asserting in New Hampshire rights which would be denied him in the state of his residence and employment. A Vermont court could have enjoined Leon Clapper

from suing the company in New Hampshire, to recover damages for an injury suffered there, just as it would have denied him the right to recover such damages in Vermont. Compare *Cole v. Cunningham*, 133 U. S. 107; *Reynolds v. Adden*, 136 U. S. 348, 353. The rights created by the Vermont act are entitled to like protection when set up in New Hampshire by way of defense to the action brought there. If this were not so, and the employee or his representative were free to disregard the law of Vermont and his contract, the effectiveness of the Vermont act would be gravely impaired. For the purpose of that act, as of the workmen's compensation laws of most other states, is to provide, in respect to persons residing and businesses located in the state, not only for employees a remedy which is both expeditious and independent of proof of fault, but also for employers a liability which is limited and determinate. Compare *New York Central R. Co. v. White*, 243 U. S. 188; *Hawkins v. Bleakly*, 243 U. S. 210; *Mountain Timber Co. v. Washington*, 243 U. S. 219" (italics ours).

The principle involved in the case last cited is, not unlike the principle involved in the instant case. In that case it was determined that the law of a foreign state was applicable. This cannot logically, nor authoritatively, be disputed in the instant case. In that case, as in the instant case, a suit had been instituted in a foreign state, which had a statute, if it were applicable, which would have governed the controversy between the parties; but it was pointed out by this court in the Bradford case, in holding it inapplicable, that the mere recognition by the courts of one state that parties by their conduct have subjected themselves to certain obligations arising under the laws of another state is not an extraterritorial application of the law of the state creating the obligation,

and that to apply the statute applicable if the *lex fori*, or some other law, governed, would be to deny to the statutes of the foreign state, whose laws were applicable, the full faith and credit to which they were entitled under the constitution. In the present case, the parties, by their conduct, have made applicable the laws of Nebraska. This is asserted by petitioner as a defense to the action, and to give it recognition does not give extraterritorial effect to the laws of that state; but to apply the statutes of the State of Missouri, conceded *arguendo* to be applicable if the laws of Missouri were applicable to the controversy, is to deny to petitioner's charter and to the judgment of the Supreme Court of Nebraska, declaring its legal significance under the laws of Nebraska, the credit, validity and effect to which they are entitled under the constitution.

The same principle was announced by this court in the recent case of *John Hancock Mutual Life Insurance Co. v. Yates*, 299 U. S. 178, where an insurance company, created under the laws of Massachusetts, had issued and delivered a policy of life insurance in the State of New York. After the death of the insured, his widow, and beneficiary under the policy, moved from New York to the State of Georgia, and thereafter instituted suit in the courts of Georgia to recover on the policy of insurance. Under the New York law, a misrepresentation in the application for life insurance as to the health of the applicant had the effect of avoiding the policy. Under the law of Georgia, a misrepresentation did not have the effect of avoiding the policy unless it was material to the

risk, and the question of whether or not it was material to the risk was a question for the jury.

The Georgia court applied the Georgia law, and recovery was allowed on the policy notwithstanding the existence of a misrepresentation as to the health of the insured in the application. This court, reversing the judgment of the Georgia court, held that since the policy of insurance was issued and delivered in the State of New York, where the insured and his beneficiary resided, the laws of that state were controlling, and that the Georgia court erred in applying the law of Georgia. In the course of the opinion, it was said (1 c. 182, 183):

"The company sets up as a defense a substantive right conferred by a statute of New York. The contract of insurance was made and the death of the insured occurred in that state. In respect to the accrual of the right asserted under the contract, or liability denied, there was no occurrence, nothing done, to which the law of Georgia could apply. Compare *Home Insurance Co. v. Dick*, 281 U. S. 397, 408, 50 S. Ct. 238, 341, 74 L. Ed. 926, 74 A. L. R. 701. To sustain the defense involves merely recognition by the courts of Georgia that the parties have by their contract made in New York subjected themselves to certain conditions prescribed by its statute. Such recognition does not give to the New York statute extraterritorial effect. The statute of New York prescribes, or limits, the things which will be effective to create binding contracts of insurance, or terms in them. As construed by the highest court of the state, the statute makes the policy with the application annexed the entire contract between the parties. And it declares that a false answer in the application to the precise question here involved is a material misrepresentation which avoids the policy;

and that the fact that a truthful answer was orally given to the agent but not recorded is without legal significance. In so declaring, the statute enacts a rule of substantive law which became a term of the contract, as much so as the amount of the premium to be paid or the time for its payment. The declaration by the statute as construed and applied by the highest court of New York that the false answer here involved is a material misrepresentation which avoids the policy determines the substantive rights of the parties as fully as if a provision to that effect had been embodied in writing in the policy. To refuse to give that defense effect would irremediably subject the company to liability. Compare *Bradford Electric Light Co., Inc., v. Clapper*, 286 U. S. 145, 160, 52 S. Ct. 571, 576, 76 L. Ed. 1026, 82 A. L. R. 696. Because the statute is a 'public act,' faith and credit must be given to its provisions as fully as if the materiality of this specific misrepresentation in the application, and the consequent nonexistence of liability, had been declared by a judgment of a New York court. *Bradford Electric Light Co., Inc., v. Clapper*, *supra*, 286 U. S. 145, at page 155, 52 S. Ct. 571, 76 L. Ed. 1026, 82 A. L. R. 696."

Another case decided by this court quite similar, in principle, with the instant case is the case of *Aetna Life Ins. Co. v. Dunken*, 266 U. S. 389.

• In that case an insurance company had issued a policy of insurance to a resident of the State of Texas, but because of his previous residence in the State of Tennessee and the fact that the policy issued in Texas was but a conversion of a previous policy issued in the State of Tennessee, it was determined by this court that the laws of Tennessee were applicable in deciding the rights of the parties under the policy of insurance.

There was in existence in the State of Texas a statute providing for the penalties and attorneys' fees in the event of vexatious delay by an insurance company in making payment of its obligations under policies of insurance issued in the State of Texas. In the Texas court the beneficiary named in the policy was allowed to recover penalties and attorneys' fees for vexatious delay under the Texas statute. But this court, in reviewing the judgment of the Texas court, held that since the Tennessee law was applicable in deciding the rights of the parties under the policy of insurance, the Texas statute, although relating to the issuance of policies by foreign insurance companies in the State of Texas, could not constitutionally be applied. The court said (l. c. 399):

"The contract contained in the original policy was a Tennessee contract. The law of Tennessee entered into it and became a part of it. The Texas statute was incapable of being constitutionally applied to it, since the effect of such application would be to regulate business outside the State of Texas and control contracts made by citizens of other states in disregard of their laws under which penalties and attorneys' fees are not recoverable."

The principle announced in the foregoing cases is the same as that applied by Mr. Justice Holmes in *Modern Woodmen of America v. Mixer, supra*, where the validity of a bylaw enacted by a fraternal beneficiary association created under the laws of the State of Illinois was in issue in the courts of the State of Nebraska. Under the laws of the State of Illinois, the bylaw had been held valid by the highest court of that state, but

under the laws of the State of Nebraska, where the certificate was issued and where the action was being maintained, the bylaw was invalid. Mr. Justice Holmes, holding that the Nebraska law could not be constitutionally applied, said (l. c. 551):

"We need not consider what other states may refuse to do, but we deem it established that they cannot attach to membership rights against the company that are refused by the law of the domicile."

What we have said above is in no sense an assertion that a state may not, within the limits provided by the constitution, regulate the business conducted by a foreign corporation within its territorial limits. It may, if it wishes, exclude it entirely from doing business within the state. But we do assert that a state may not, under the guise of regulating foreign corporations or prescribing conditions to the conduct of business by them within the state, change the substantive rights of parties established under the laws of another state applicable, beyond question, to the relationship between them, nor may the state, in regulating the business of a foreign corporation or prescribing conditions to its transacting business within the state, deprive the corporation of rights to which it is entitled under the Constitution of the United States. *Hanover Fire Ins. Co. v. Carr*, 272 U. S. 494.

In the instant case, if a cause of action could not be maintained by respondents to recover under the beneficiary certificate in controversy in the courts of the State of Nebraska, under its laws, it follows, we think,

that under the full faith and credit provision of the constitution, it may not be maintained in the courts of the State of Missouri by virtue of any legislative enactment of that state.

If Section 82 and the limited payment features of the beneficiary certificate were *ultra vires* and void in Nebraska under its laws, they were likewise *ultra vires* and void in Missouri, although under its laws the certificate is labeled an "old-line" contract of insurance, or something else. If this were not true, membership in a fraternal order under the laws of one state could, by legislative enactment of a foreign state, be converted into any other relationship conceivable, and the substantive rights of the parties could be changed at the will of the legislators of the various states.

It was, no doubt, the obvious unsoundness, and the confusion which would necessarily result from holding otherwise, as well as the express language of the constitutional provision itself, that has caused it to become so well established by the decisions of the court that a statute enacted in one state cannot, under the full faith and credit provision of the constitution, operate to impair the credit, validity and effect which would otherwise be given to a judgment or public act of a sister state. *Christmas v. Russell*, 5 Wall. 290; *Fauntleroy v. Lum*, 210 U. S. 230; *Kenny v. Supreme Lodge*, 252 U. S. 411; *Roche v. McDonald*, 275 U. S. 449; *Aetna Life Insurance Co. v. Dunken*, *supra*; *Bradford, Electric Light Co. v. Clapper*, *supra*; *John Hancock Mutual Life Ins. Co. v. Yates*, *supra*.

Under the Nebraska law, as determined by the highest court of the State of Nebraska, Section 82 and the limited payment provisions in the beneficiary certificate were *ultra vires* of petitioner and invalid, and the court below was bound to give effect to this interpretation regardless of whether or not under the laws of the State of Missouri, or some other state, petitioner was an old-line insurance company and its beneficiary certificate was an old-line contract of insurance.

Conclusion.

In conclusion, it is submitted that the court below erred in refusing to apply the law of Nebraska in deciding the controversy between the parties and in refusing to accord full faith and credit to petitioner's charter and to the judgment in the *Trapp* case, wherein the legal significance of petitioner's charter, under the Nebraska law, is announced. To hold otherwise clothes petitioner with powers in the State of Missouri which do not exist elsewhere, and necessarily results in an advantage to certificate holders who are residents of the State of Missouri over certificate holders who are residents of other states. Moreover, it imposes upon petitioner a burden with respect to certificates issued in the State of Missouri not embraced within its charter nor its constitution and bylaws, and necessarily results in an impairment of the "Beneficiary Fund" with respect to which equality between each and all of the members should, and must, be maintained.

It is further submitted that because of the errors thus committed by the court below, its judgment, should be reversed.

Respectfully submitted,

RAINEY T. WELLS,
of Omaha, Nebraska,
JOHN T. HARDING,
DAVID A. MURPHY,
of Kansas City, Missouri,
Attorneys for Petitioner.

M. E. FORD,
of Maryville, Missouri,
R. CARTER TUCKER,
JOHN MURPHY,
CHARLES B. TURNEY,
of Kansas City, Missouri,
Of Counsel.

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Supreme Court of the United States

OCTOBER TERM, 1938.

No. 31

**THE SOVEREIGN CAMP OF THE WOODMEN OF THE
WORLD, A CORPORATION, PETITIONER,**

VS.

**WILLIAM F. BOLIN, EDWARD E. BOLIN, SAMUEL A.
BOLIN, ET AL., RESPONDENTS.**

**ON WRIT OF CERTIORARI TO THE KANSAS CITY COURT OF APPEALS
OF THE STATE OF MISSOURI.**

PETITIONER'S REPLY BRIEF

RAINEY T. WELLS,
of Omaha, Nebraska,

JOHN T. HARDING,

DAVID A. MURPHY,

of Kansas City, Missouri,

Attorneys for Petitioner.

M. E. FORD,
of Maryville, Missouri,

R. CARTER TUCKER,

JOHN MURPHY,

CHARLES B. TURNEY,

of Kansas City, Missouri,

Of Counsel.

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PETITIONER'S REPLY BRIEF

Petitioner offers these suggestions in reply to respondents' argument with the hope that they will lighten the work of the Court. Our answer will be in the fewest possible words.

Point A, page 11, Respondents' Brief.

Respondents assert that the judgment of the state court rests upon at least four independent grounds not in-

volving a federal question and each of which is adequate to support the judgment, and cite *Arkansas S. R. Co. v. Bank*, 207 U. S. 270. This we deny. We agree with the pronouncements of the Arkansas case, but deny its application here. The constitutional issue is the only question in this case. We shall attempt to show later that each of the "four independent grounds" mentioned were independent denials of the full faith and credit provision. We will treat most briefly each of said "four grounds" in the order set out.

(a), page 12, Respondent's Brief

The first independent ground upon which respondents stand is that the operation of the constitutional mandate may be arrested by application of the Missouri rule of estoppel.

The court below so held. Since the Nebraska law was applicable to the controversy between the parties under the faith and credit provision of the Constitution, the application of the Missouri law was violative of the constitutional provision. This thought is treated under Point (e), page 45, and Point (g), page 49, Petitioner's Brief.

To sustain the proposition that the Federal Constitution can be annulled by a local plea of estoppel, respondents cite, on page 12 of their brief, seven cases in none of which (except *Rechow v. Bankers' Life*, which is against respondent) was the Federal Constitution involved.

Evidently counsel for respondents confuse the application of the Missouri law of estoppel as applied to mere conflict of law cases with its application to a constitutional ques-

tion, as all of the cases cited, except as above stated, were conflict of laws cases, with perhaps one exception where the full faith and credit provision was improperly pleaded in a mere conflict of laws case. No case is cited in respondents' brief which supports the doctrine that the local rule of estoppel is applicable where the Federal Constitution is involved as here.

This court has recognized the proposition that where the constitutional mandate requires that full faith and credit be accorded a decision of a foreign state, as contended for here, it would be a denial of such provision for a state to interpose its own law of estoppel and refuse to give said decision the same force and effect as it has at home.

On page 13 of respondents' brief is cited *Enterprise Irrigation Dist. et al. v. Farmers Mutual Canal Co. et al.*, 243 U. S. 157. That case is not applicable here. Dissecting it in the briefest way:

- (a) No question of full faith and credit was involved.
- (b) The law of Nebraska was applicable and the question of estoppel was decided under the Nebraska law.
- (c) The constitutional question involved (not full faith and credit) was waived.

Counsel leaves the thought that petitioner is pleading *ultra vires* to escape from a bad bargain.

It is true the certificate called for an actuarial impossibility. Ninety cents a month will not furnish protection of \$1100.00 every day for 20 years and at the end of that period accumulate a reserve of \$1100.00. Ninety cents a

month for 20 years is \$216.00. No actuarial rule is elastic enough to stretch that figure to meet the situation.

But the inadequacy of assessments is as distantly related to the constitutional issue as are Arcturus and his sons.

If by-law 82 had not been held void *ab initio*, petitioner must have had recourse in bankruptcy, not the Constitution.

(b), page 13, Respondents' Brief

Respondents assert that the second ground supporting the judgment was that the certificate was subject to the general insurance laws of Missouri because at the time it was issued petitioner had no license to do a fraternal business in Missouri; that this fact converted the contract into an old line policy and because it was old line the Missouri insurance laws alone were applicable.

We are not in accord with respondents. The application of the Missouri law was of itself a denial of the constitutional provision. We have treated this point under Point (g), page 49 of Petitioner's Brief. We shall not reiterate, except to say that while no license was required and there was no way by which one could be procured, the question of license or no license is immaterial.

On page 14 of Respondents' Brief are cited seven cases to the effect that a fraternal society operating in Missouri without a license cannot claim the exemptions and benefits of the fraternal statutes. With this we agree, but at no stage of the proceeding has petitioner claimed any rights or benefits under the statutes of Missouri either fraternal

or old line. It claimed that the rights of the parties were fixed by the charter as interpreted by the domiciliary court. All along petitioner has insisted that the Nebraska decision was an interpretation of its charter and was a denial of its authority to issue the contract (the marginal note); that petitioner having no authority to issue the contract, it is immaterial what label is placed upon it.

On page 15 Respondents cite four cases. In none of which was the full faith and credit question involved. These were cases upholding the constitutionality of the Missouri insurance law under the due process clause and the equal protection clause of the Constitution. In all of those cases the policy of insurance had been issued to, and had been accepted by, a resident of Missouri and was therefore, a Missouri contract governed by the laws of Missouri. They in no way related to the full faith and credit issue before us. In pressing the above cases counsel have evidently overlooked the distinction between membership in a fraternal order, the rights incident to it and the relationship between an insurance company and the holders of an ordinary policy.

In *Haner v. Grand Lodge*, 102 Neb. 563, 566, the court said:

"Plaintiff as a member of the association was a party to the adoption of this by-law. He does not stand in the same relation to the association as does the holder of a policy in a standard life insurance company, but occupies the dual position of insurer and insured."

This distinction is clearly stated in *Modern Woodmen of America v. Mixer*, 267 U. S. 544, 551, where Mr. Justice Holmes said:

"The act of becoming a member is something more than a contract, it is entering into a complex and abiding relation, and as marriage looks to domicile, membership looks to and must be governed by the law of the state granting the incorporation."

If an old line policy of insurance is issued and accepted in a foreign state, the laws of such foreign state become a part of the contract, and if a suit were brought in Missouri on such policy, the laws of Missouri could not be applied to the construction of the policy (in lieu of such foreign laws) as such application would be a denial of full faith and credit. It would be a substitution of the laws of Missouri in place of the laws of such foreign state and would alter the rights, duties and responsibilities of the parties.

Aetna Life Ins. Co. v. Dunken, 266 U. S. 389.

John Hancock Mutual Life Ins. v. Yates, 299 U. S. 178.

That well established rule is applicable here. The laws of Nebraska govern the controversy between the parties; hence, the laws of Missouri were inapplicable (see Point (a), p. 18, Petitioner's Brief.) We repeat: The application of the Missouri law and the refusal to apply the Nebraska laws changed the substantive rights of the parties and was a denial of the full faith and credit provision of the Constitution.

(c), page 15, Respondents' Brief

Respondents assert that the third independent ground supporting the judgment was that the certificate was delivered to and accepted by Bolin in the State of Mis-

souri; that all assessments were paid in Missouri, and that, therefore, it was a Missouri contract to be governed solely by the laws of Missouri regardless of the Nebraska decisions and the Federal Constitution. To boil it down—Missouri law for Missouri contracts.

In its last analysis this is secession, and if all the states followed it, Section 1, Article IV, of the Federal Constitution would go out the window; *Royal Arcanum v. Green* would become sounding brass; *Modern Woodmen v. Mixer* would become a tinkling cymbal, and fraternal insurance societies would fold their tents like the Arabs.

A fraternal society lives, moves and has its being in mutuality among members. It has but one charter but its certificates are scattered all over the nation. The rights of the members do not hang upon the rules of the parish in which they happen to live, but upon the fundamental laws of the society as construed by the domiciliary court. To put it in the briefest way—members rights are determined by the Charter, not by geography. Such rights are mutual, uniform—the same everywhere. The Federal Constitution, like the law of gravity, is impartial, universal and omnipresent, and, I might add, obtains in Missouri. Parochial zeal cannot annul it. The decisions of this Court (p. 14, Petitioner's Brief) settle this case.

(d), page 16, Respondents' Brief

Respondents insist that the fourth ground, independent of the constitutional question, supporting the judgment is that the certificate is a Missouri contract and the rights

of the assured cannot be materially changed by subsequently enacted by-laws or statutes.

Petitioner does not now, claim, and has never claimed, any rights under any after-enacted by-law or after-enacted statute. Respondent's claim is as far removed from the issue as the East is from the West. Petitioner is standing flatly on the proposition that the society had no authority under its charter to issue the contract; that by-law 82 and the marginal note have been held to be void *ab initio* and *ultra vires*. It is true the record shows that in 1899 the membership saw their error in enacting by-law 82; they saw bankruptcy just around the corner and repealed the offending by-law, but this repeal is wholly unrelated to the constitutional question. Although it is immaterial, we will add that the by-law being void *ad initio* conferred no rights to the members and the repeal took away none.

We think that each of the "four grounds" is a denial of the full faith and credit provision. The first and only issue here is the constitutional question. That issue being present, the "four grounds" are absent.

B. (a) page 17, Respondents' Brief

The record (7-16) shows that the constitutional question was properly pleaded and that it was pressed at every opportunity. Without receding from this pronouncement; it is a well-established rule of this Court that it is immaterial whether or not a Federal question is raised in the trial court if it was passed upon by the state appellate court adversely to the contention of the party asserting it.

In *Home Insurance Company v. Dick*, 281 U. S. 397, 407, it was said:

"That the federal questions were not raised in the trial court is immaterial. For the Court of Civil Appeals and the Supreme Court of the state considered the questions as properly raised in the appellate proceedings and passed on them adversely to the federal claim."

In *Cissna v. State of Tennessee*, 246 U. S. 289, the court repeated the doctrine as follows:

"But if the Supreme Court of the state treated them adversely to plaintiff in error and could not have otherwise reached the result it did reach, it becomes immaterial to consider how they were raised."

(b), page 17, Respondents' Brief

Under this caption respondents say that the Trapp judgment is not binding upon the courts of Missouri because it was not rendered in a class suit. We answer: The Trapp judgment was binding upon the courts of Missouri because:

1. It was rendered in a class suit in which Bolin was represented either by Trapp or by the society, and
2. It was a judicial interpretation under the Nebraska law of petitioner's charter (Point (d), p. 41, petitioner's brief).

Under Point (c), page 34 of petitioner's brief, we discussed the effect of the Trapp judgment as one rendered in a suit in which all members of the society were represented by its presence in the litigation. We shall

not reiterate, but beg to treat very briefly the six reasons assigned by counsel (p. 19) why the Trapp judgment should not be accorded faith and credit:

(1) The fact that no right of action existed on the instant certificate at the time of the filing of the Trapp suit is of no significance when we consider that the basic issue in the Trapp case (as in this case) was the obligation of members to continue to pay assessments into the "beneficiary fund." At the time the Trapp suit was filed, Bolin was obligated to pay assessments to keep his certificate in force and the question decided in the Trapp case was whether or not he and others similarly situated would be compelled to continue to do so after the expiration of the "payment to cease" period.

In principle the same contention was made in *Hartford Life Insurance Co. v. Ibs*, 237 U. S. 662, 673, where it was said:

"But the defendant's contention that the policy had lapsed, because of the failure of Ibs to pay the assessment, and the plaintiff's reply that the assessment was void because the mortuary fund was sufficient to meet Call 127, raised an issue as to the right of the insurance company to levy the assessment. On that issue the Connecticut decree was admissible, since it adjudged that the company had the right to make advances to pay claims and could subsequently collect the amount of such claims by an assessment levied as in the present case."

The issue in the Trapp case and the issue in the instant case are identical.

Question: Were all members everywhere required to continue the payment of assessments to keep the bene-

fiary fund intact and their certificates in effect? The Trapp case answers that question in the affirmative. This being true, it is immaterial that in the Trapp case the "payments to cease" period had expired a few months prior to that in the instant certificate.

(2) As pointed out under point (b), page 30, petitioner's brief, Trapp instituted the suit for and on behalf of himself and all others similarly situated. In the answer filed by the society in the Trapp case (R. 88) is the following:

"Whereby this defendant states that if the plaintiff and others holding similar certificates should be permitted to continue said insurance certificates in force without the payment of assessment after the expiration of twenty years, it would result that the other members of said Order who did not hold such certificates would be compelled to pay the death losses for the members holding so-called 'payments to cease' policies . . ."

It is thus apparent that both Trapp and the society believed they were, and really were, litigating a suit which would be binding upon all members of the society wherever located.

In order to invoke the Trapp decision, it was not necessary to plead and prove that Bolin was represented in the Trapp suit. Under the decisions of this Court and also of the courts of Nebraska the presence of the society in the litigation was sufficient to bind all members of the controversy actually involved a subject matter common to all. The question of the continuous payment of assessments was certainly a subject common to all (Point (c), p. 34, petitioner's brief).

(3) Of course, the insurance laws of Missouri were not involved and could not have been involved in the Trapp case, but that fact does not affect the binding effect of the Trapp judgment. The insurance laws of Missouri could not constitutionally be applied to determine the rights of any member to participate in the beneficiary fund or the corresponding duty to pay assessments. Those were matters controlled wholly by the laws of Nebraska (Point (a), p. 18 and Point (g), p. 49, petitioner's brief).

(4) Able counsels' assertion that "there was no plea (in the Trapp case) sufficient under the Nebraska law to raise the issue of estoppel" is a vagrant statement without visible means of support. As stated, the Trapp petition and the instant petition were substantially the same and the pleas of estoppel were likewise substantially the same. The Nebraska court held that it was concluded as to every issue by its previous decision in the Haner case. In the Haner case the question of estoppel was directly before the court and was denied. Since the question of estoppel was an issue in both the Haner and Trapp cases and since there was no question of sufficiency of the pleadings in either case, one cannot escape the conclusion that the question of estoppel was decided adversely to Trapp.

(5) The fact that the Trapp suit was to compel the society to issue a paid-up certificate and the instant case is one to recover the benefit under a certificate does not affect the binding effect of the Trapp judgment as to issues actually decided.

The exact contention made by counsel for respondents was made in the case of *Hartford Life Insurance Company*

v. *Ibs*, *supra*, where this Court in deciding the question adversely to the contention of respondents said (l. c. 673):

"For 'even if the second suit is for a different cause of action, the right, question, or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remained unmodified.' *Southern Pacific Co. v. United States*, 168 U. S. 48-49. So also it was held in *Forsyth v. Hammond* (166 U. S. 518), that 'though the form and causes of action be different, a decision by a court of competent jurisdiction in respect to any essential fact or question in the one action is conclusive between the parties in all subsequent actions.'"

As heretofore pointed out, the basic question in the Trapp case, as here, was the validity of Section 82 and the limited payment provision of the certificate under the charter of the society. That issue was directly decided in the Trapp case under the Nebraska law then in force.

The resolution of petitioner's Executive Council, referred to by counsel for respondents, later became Section 92, the validity of which is involved in the instant case (R. 12, 13). The Supreme Court of Nebraska did not consider the Trapp case based upon the resolution as such, but considered the case as based upon Section 82 of the by-laws of the society. This is indicated by the following language of the opinion (R. 93):

"This is an action in equity brought by plaintiff to compel defendant, a fraternal beneficiary society, to issue and deliver to him a paid up policy in the sum of \$2,000, under the provisions of a by-law of defendant in force at the time the plaintiff became a

member of the society. The by-law provided that every person joining the society, after reaching the age of 42 years and remaining a member thereof in good standing for a term of 20 years 'shall not thereafter be required to pay any assessment or dues and shall receive a paid up certificate, payable at death to his designated beneficiary.' "

It was not necessary to show that Pleasant Bolin had any actual knowledge of the Trapp litigation, or that he acquiesced in being represented either by Trapp or by the society. It is sufficient if he was at that time a member of the society and the litigation involved a subject matter which affected his rights and the rights of other members in the "beneficiary fund" established and maintained for the benefit of all the members.

(6) What has been said under Point (c), page 34 of petitioner's brief, is sufficient to dispose of the contention made by respondents that the Trapp judgment was not binding upon certificate holders residing in Missouri.

The case of Old Wayne Mutual Life Association v. McDorough, et al., 204 U. S. 8, cited by respondents to sustain their position was an action brought in Indiana on a judgment obtained against the insurance association in Pennsylvania under a Pennsylvania statute providing in substance for service upon foreign insurance companies doing business in the state by service upon the Secretary of State. It was contended in the Indiana courts that the Pennsylvania court was without jurisdiction to render a judgment against the insurance association for the reason that the insurance association was not at any time doing business in the State of Pennsylvania so as to render it amenable to substituted service of process.

and that the Indiana courts were not bound to give full faith and credit to a Pennsylvania judgment rendered in that manner. This Court upheld the Indiana court, holding that the full faith and credit provision required the foreign court to give only such effect to the judgment as would be given to it by law or usage at home, and since the Pennsylvania court was without jurisdiction to render the judgment against the insurance association, it was void and of no effect either in Pennsylvania or in Indiana.

There was no pretense that the case was a class suit and that the association was bound by the Pennsylvania judgment because it was bound as a member of a class. The only question involved in that case was whether or not the requirements of due process had been met and it was rightly held that they had not.

(c) page 21, Respondents' Brief

It is true that there were no questions under the Missouri law involved in the Trapp litigation, but, as heretofore pointed out, since petitioner was a Nebraska association and Bolin was a member thereof, the relationship between them was governed exclusively by the laws of that state and the application of the Missouri law is of itself a denial of full faith and credit.

Cole v. Cunningham, et al., 133 U. S. 107, cited by respondents on page 21 of respondents' brief, was a case where the Massachusetts court having jurisdiction of insolvency proceedings, enjoined residents of Massachusetts from attaching an insolvent debtor's property in New York and thereby evading the insolvency laws and the effect of the decree of the court of Massachusetts. It was held by

this Court that the order of the Massachusetts court did not violate the full faith and credit provision of the Constitution and did not amount to an extra-territorial application of the Massachusetts law. Clearly, this case has no bearing on the instant case.

The remainder of the cases cited at the bottom of page 21 of respondents' brief are all cases where it was held in substance that a judgment rendered in a former suit is not binding in a subsequent suit between the same parties where the two suits involved different issues. We do not dispute the correctness of these cases, but they clearly have no application here.

(d) page 22, Respondents' Brief

It has never before been contended by respondents in the instant case that the respondents were denied rights under the due process clause of the Constitution, and certainly, the case of *American Surety Company v. Baldwin*, 287 U. S. 156, does not sustain the contention.

In that case the surety company had executed a supersedeas bond and after the judgment appealed from had been affirmed, judgment was, on motion of the prevailing party and without notice entered against the surety company.

The proceeding was pending in Idaho and under its laws the surety company, after a summary judgment had been entered against it, was entitled to be heard, and upon such hearings, it was held that the court had jurisdiction to render the judgment. This Court held that the surety company had not been denied its right under the due

process clause of the Constitution; that it had asserted its rights in the courts of Idaho, had been afforded a hearing, thus being afforded due process under the Constitution.

C, page 22, Respondents' Brief

Section 82 and the limited payment provision of the beneficiary certificate were not void by reason of any after-enacted statute of Nebraska and, therefore, the contract clause of the constitution is not involved. They were void under the charter of the society which necessarily existed prior to the issuance of the benefit certificate.

The argument made by counsel for respondents can be disposed of briefly by pointing out that the Trapp certificate was issued when the laws of Nebraska of 1887 pleaded in petitioner's answer (R. 9) and introduced in evidence (R. 67) were in effect. It was not contended in the Trapp case nor is it contended in this case that Section 82 and the limited payment provision of the beneficiary certificate were void by reason of any statute.

They were void under the charter of the society because under its articles of incorporation it had no power or authority to issue such certificates as were involved in the Trapp case or in the instant case. The Trapp decision followed the Haner decision only in principle.

Counsel argue that because the Haner case was decided under the laws of 1897 of Nebraska, it follows that the Trapp case likewise predicated its decision under those laws. Counsel's assumption rests upon the further assumption that the Supreme Court of Nebraska, in deciding the Trapp case, did not know what it was doing. The court

applied to the Trapp case the principles of the Haner case. They of course, construed the charter in the light of the proper statutes which were those in force and effect at the date of the certificate, which were the ones pleaded here.

D, page 24 Respondents' Brief

The decisions of this Court relied upon by petitioner are not distinguishable from the instant case.

Counsel for respondent seeks to distinguish the cases of *Supreme Council of the Royal Arcanum v. Green*, *Modern Woodmen of America v. Mixer*, *Hartford Life Ins. Co. v. Ibs*, *Hartford Life Ins. Co. v. Barber*, and the cases dealing with the relationship between a corporation and its members in insolvency proceedings, on the ground that in all of those cases the internal affairs of the corporation and its relationship to its members are dealt with, where, in the instant case the controversy arises under a separate and independent contract between the society "and another party." Counsel overlooks the fact that the so-called separate and independent contract is but a document evidencing membership in a fraternal order, that no one but a member of the order could hold that document, and that the "other party" referred to by counsel was a member of the society.

All of the rights under the so-called separate and independent contract were necessarily dependent upon the charter and by-laws of the society, just as the rights of any member of any corporate body are dependent upon the charter and by-laws of the corporation.

Counsel for respondent contend that the Steen case, on which the decision of this Court in the Mixer case was

based, was merely a precedent, and not a conclusive judgment as to the remaining members of the association. If that were true, this Court would not have taken jurisdiction of the Mixer case. This Court granted the writ because of the Constitutional question. The Mixer case has been cited hundreds of times on the constitutional point.

The cases cited on page 28 of respondents' brief to sustain its contention that petitioner was estopped to assert the invalidity of Section 82 and the limited payment provision of the beneficiary certificate are clearly not in point. In none of those cases was estoppel sustained to deny a party a substantive right where the Constitution requires recognition of that right. In all of them the only question involved was whether the party, by his conduct, had waived his right or was estopped to assert a constitutional right which was conceded to be his in the absence of waiver or estoppel.

Petitioner prays that the judgment and decision of the Kansas City Court of Appeals be reversed.

Respectfully submitted,

RAINEY T. WELLS,
of Omaha, Nebraska,

JOHN T. HARDING,

DAVID A. MURPHY,

of Kansas City, Missouri,

Attorneys for Petitioner.

M. E. FORD,
of Maryville, Missouri,

B. CARTER TUCKER,

JOHN MURPHY,

CHARLES B. TURNEY,

of Kansas City, Missouri,

Of Counsel.

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Supreme Court of the United States

OCTOBER TERM, 1937.

No. 1016.

THE SOVEREIGN CAMP OF THE WOODMEN OF THE
WORLD, A CORPORATION, PETITIONER,

VS.

WILLIAM F. BOLIN, EDWARD E. BOLIN, SAMUEL A.
BOLIN, JOHN O. BOLIN, SARAH B. CAMPBELL,
JAMES D. BOLIN, ELAINE SCOTT, PERRY BOLIN,
AND DEAN BOLIN, RESPONDENTS.

**SUGGESTIONS IN OPPOSITION TO THE ISSUANCE
OF A WRIT OF CERTIORARI TO THE KANSAS
CITY COURT OF APPEALS OF THE STATE
OF MISSOURI.**

To the Honorable Charles Evans Hughes, Chief Justice
of the United States, and the Associate Justices of
the Supreme Court of the United States;

Summary statement of the matter involved.

The respondents, William F. Bolin, Edward E. Bolin,
Samuel A. Bolin, John O. Bolin, Sarah B. Campbell,
James D. Bolin, Elaine Scott, Perry Bolin and Dean Bolin
respectfully show to this Honorable Court that they are

respondents herein and are the sole and only heirs at law of one Pleasant Bolin, deceased.

These respondents further respectfully show to the court that on the 13th day of April, 1934 (Rec. 143-145), they obtained a judgment against the petitioner herein for eleven hundred dollars (\$1100.00); that thereafter, after an unavailing motion for a new trial, the petitioner herein was granted an appeal to the Supreme Court of the State of Missouri; that preliminary to the hearing of said cause in the Supreme Court of the State of Missouri, these respondents filed a motion in said court, which said motion constituted a part of the brief filed in said court by respondents, to transfer said cause to the Kansas City Court of Appeals on the ground that no federal question was involved. The Supreme Court of the State of Missouri, in its opinion duly rendered (Rec. 170-173), sustained the contentions of these respondents and held that the paramount issue for determination was whether or not the contract in question was a Missouri contract or a Nebraska contract and further ordered the cause transferred to said Kansas City Court of Appeals. Thereafter said cause was heard and determined by said Kansas City Court of Appeals (Rec. 174-192) and upon a motion for rehearing, a subsequent opinion was filed in said cause (Rec. 199-216). Upon a further motion for rehearing, an additional opinion was filed in said court (Rec. 217-219). In all of said opinions herein referred to, both the Supreme Court of the State of Missouri and the Kansas City Court of Appeals took the position that no federal question was involved in the decision of said

cause and that because of the state of the pleadings and proof, the decision must be made upon independent state grounds.

For brevity's sake, we shall not make any further statement of the facts involved as they are set out at length in the opinion.

It is the contention of these respondents that the pleadings and proof in this case justify the judgment rendered; that said judgment is the only one which could have been rendered under the pleadings and proof; that the judgment rests upon independent state grounds which are sufficient to sustain it and that the decision of the federal question was not necessary to a proper judgment in the cause and that under the facts and circumstances and legal points involved a writ of certiorari should not issue from this Honorable Court to the said Kansas City Court of Appeals.

SUMMARY OF ARGUMENT.

A.

The opinion of the state court rendered in this cause shows that it was not rendered upon a federal question, that it was not necessary to the determination of the cause that a federal question should actually be decided, and that the judgment rendered was made without deciding any federal question and rests upon independent state grounds. Therefore the Supreme Court of the United States will not take jurisdiction.

Lynch v. People of New York ex rel. Pierson,
293 U. S. 52, 55 S. Ct. 16, 75 L. Ed. 191.

Southwestern Bell Telephone Co. v. State of Oklahoma et al., 58 S. Ct. 528.

Eastern Building & Loan Ass'n v. Williamson,
189 U. S. 122, 23 S. Ct. 527.

De Saussure v. Gaillard, 127 U. S. 216, 234, 8 S. Ct. 1053, 32 L. Ed. 125.

Wood Mowing and Reaping Machine Co. v. Skinner, 139 U. S. 293, 295, 297, 11 S. Ct. 528, 35 L. Ed. 193.

Mellon, Director General of Railroads, v. O'Neil,
275 U. S. 212, 48 S. Ct. 62, 72 L. Ed. 245.

Whitney v. People of the State of California,
244 U. S. 357, 47 S. Ct. 641, 71 L. Ed. 1095.

Moore v. Mississippi, 21 Wall. 636, 639, 22 L. Ed. 653.

Murdock v. City of Memphis, 20 Wall. 590, 635, 636, 22 L. Ed. 429.

Neff v. Sovereign Camp, W. O. W., 286 U. S. 549, 52 S. Ct. 501, 226 Mo. App. 899, 48 S. W. (2d) 564.

Waters-Pierce Oil Company v. Texas, 212 U. S. 86, 29 S. Ct. 220.

B.

The certificate was delivered to and accepted by Pleasant Bolin, the insured, in this state. He paid all of the dues and assessments thereon in this state. — This makes it a Missouri contract to which the laws of Missouri apply and by the laws of which it is governed; and the issues concerning it are to be adjudicated in accordance with the decisions of the courts of Missouri.

New York Life Ins. Co. v. Cravens, 178 U. S. 389, 20 S. Ct. 962, 148 Mo. 583.

Mutual Life Ins. Co. of New York v. Johnson, 293 U. S. 335, 55 S. Ct. 154.

Northwestern Mutual Life Ins. Co. v. McCue, 223 U. S. 234, 32 S. Ct. 220, 56 L. Ed. 419.

Equitable Life Assurance Society v. Pettus, 140 U. S. 226, 11 S. Ct. 822, 35 L. Ed. 497.

Neff v. Sovereign Camp, W. O. W., 286 U. S. 549, 52 S. Ct. 501, 226 Mo. App. 399, 48 S. W. (2d) 564.

Ragsdale v. Brotherhood of Railroad Trainmen, 80 S. W. (2d) 272.

C.

At the time of the issuance of this policy of insurance, Sections 2823 to 2827, both inclusive, of the Revised Statutes of Missouri of 1889, were in full force and effect in this state, and this foreign insurance concern was governed by the general insurance laws of Missouri at the time it issued the policy in suit.

Unless it had been proven on the trial that at the time this certificate was issued, June 5, 1896, this company was authorized to transact business in Missouri as a fraternal benefit company, its policies issued and de-

livered in Missouri to Missouri residents and citizens, payable in Missouri, with premiums payable in Missouri, were governed solely under the old line insurance laws of the State of Missouri. Such proof was not made.

Kern v. Legion of Honor, 167 Mo. 471.

Harris v. Switchmen's Union of North America, 237 S. W. 155.

New York Life Insurance Co. v. Cravens, 178 U. S. 389, 20 S. Ct. 962, affirming case of *Cravens v. New York Life Insurance Co.*, 148 Mo. 583, 53 L. R. A. 305, 71 Am. St. Rep. 628.

Gruwell v. Knights & Ladies of Security, 126 Mo. App. 496.

Brassfield v. Knights of the Maccabees, 92 Mo. App. 102.

Thompson v. Royal Neighbors of America, 154 Mo. App. 109.

Smith v. Foresters, 228 Mo. 675.

Mathews v. Modern Woodmen, 236 Mo. 326.

Aløe v. Fidelity Mutual Life Ass'n, 164 Mo. 675.

ARGUMENT.

(a) At the outset respondents contend that the judgment rendered in the instant case rests upon independent state grounds, and that the state grounds upon which the opinion rests are adequate to support the judgment.

Respondents further contend that the decision of a federal question was not necessary to the determination of the cause and furthermore that the judgment as rendered could well have been given and was as a matter of fact given without the necessity of deciding any federal question. Where this situation exists, this Honorable Court will not assume jurisdiction. This principle of law has been enunciated on many occasions by this court and in the summary of argument (A, *supra*), we have called attention to said decisions.

One of the quite recent cases announcing this principle is *Lynch v. People of New York ex rel. Pierson*, 293 U.S. 52, 55 S. Ct. 16, 75 L. Ed. 191, and on 1. c. 17, 55 S. Ct. 16, the following quotation tersely summarizes this point of law:

"It is essential to the jurisdiction of this court in reviewing a decision of a court of a state that it must appear affirmatively from the record, not only that a federal question was presented for decision to the highest court of the state having jurisdiction, but that its decision of the federal question was necessary to the determination of the cause, and that

it was actually decided or that the judgment as rendered could not have been given without deciding it."

De Saussure v. Gaillard, 127 U. S. 216, 234, 8 S. Ct. 1053, 32 L. Ed. 125.

Johnson v. Risk, 137 U. S. 300, 306, 307, 11 S. Ct. 111, 34 L. Ed. 683.

Walter A. Wood Mowing & Reaping Machine Co. v. Skinner, 139 U. S. 293, 295, 297, 11 S. Ct. 528, 35 L. Ed. 193.

Eustis v. Bolles, 150 U. S. 361, 366, 367, 14 S. Ct. 131, 37 L. Ed. 1111.

Whitney v. California, 274 U. S. 357, 360, 361, 47 S. Ct. 641, 71 L. Ed. 1095.

● *Mellon v. O'Neil*, 275 U. S. 212, 214, 48 S. Ct. 62, 72 L. Ed. 245.

"Where the judgment of the state court rests on two grounds, one involving a federal question and the other not, or if it does not appear upon which of two grounds the judgment was based, and the ground independent of a federal question is sufficient in itself to sustain it, this court will not take jurisdiction."

Allen v. Arguimbau, 198 U. S. 149, 154, 155, 25 S. Ct. 622, 49 L. Ed. 990.

Johnson v. Risk, *supra*.

Walter A. Wood Mowing & Reaping Machine Co. v. Skinner, *supra*.

Consolidated Turnpike Co. v. Norfolk & Ocean View Railway Co., 228 U. S. 596, 599, 33 S. Ct. 605, 57 L. Ed. 982.

Cuyahoga Power Co. v. Northern Realty Co., 244 U. S. 300, 302, 304, 37 S. Ct. 643, 61 L. Ed. 1153.

(b) One of the independent state grounds upon which the instant judgment rests is the fact that the contract of insurance in question is a Missouri contract and is governed exclusively by the insurance laws of the State of Missouri and the Nebraska law is not controlling. In addition to the many state decisions cited in the opinion in support of this principle (Rec. 202-203), we find ample authorities in the decisions of this Honorable Court sustaining this proposition. One of the earlier cases to which we desire to call attention is *New York Life Insurance Co. v. Cravens*, 178 U. S. 389, 20 S. Ct. 962, 148 Mo. 583. This case was originally decided by the Missouri Supreme Court (148 Mo. 583) and was then appealed to the Supreme Court of the United States. In affirming the judgment of the Missouri Supreme Court, which held under the facts in that case that the contract of insurance was a Missouri contract and not a New York contract as was contended by the defendant, this court approved the language used by the Missouri Supreme Court (20 S. Ct. 1, c. 965) as follows:

"Foreign insurance companies which do business in this state do so, not by right, but by grace, and must in so doing, conform to its laws; they cannot avail themselves of its benefits without bearing its burdens; moreover, the state may prescribe conditions upon which it will permit foreign insurance companies to transact business within its borders or exclude them altogether, and in so doing, violates no contractual rights of the company."

Another case of importance is that of *Northwestern Mutual Life Insurance Company v. McCue*, 223 U. S. 234,

32 S. Ct. 220, 56 L. Ed. 419. Therein the question involved was the determination of whether or not the laws of the State of Virginia or the State of Wisconsin should be applied in the interpretation of the contract. In 32 S. Ct. 1. c. 222, it is said as follows:

"The obligation of a contract undoubtedly depends upon the law under which it is made. In which state, then, Virginia or Wisconsin, was the policy made? In *Equitable Life Assurance Society v. Clements*, (*Equitable Life Assurance Society v. Pettus*, 140 U. S. 226, 35 L. Ed. 467, 11 S. Ct. 822) the question arose whether the contract sued on was made in New York or Missouri. The assured was a resident of Missouri, and the application for the policy was signed in Missouri. The policy, executed at the office of the company, provided that the contract between the parties was completely set forth in the policy and the application therefor, taken together. The application declared that the contract should not take full effect until the first premium should have been actually paid during the life of the person proposed for assurance. Two annual premiums were paid in Missouri, and the policy, at the request of the assured, was transmitted to him in Missouri and there delivered to him. The court said 'Upon this record the conclusion is inevitable that the policy never became a completed contract, binding either party to it, until the delivery of the policy and the payment of the first premium in Missouri; and consequently that this policy is a Missouri contract, and governed by the laws of the State of Missouri.' "

The opinion proceeds to examine a multitude of authorities and held that that particular policy of life insurance involved, though executed at the company's office in Wisconsin, was a Virginia contract for the reasons that the application was made by a resident of Virginia within the state; that the policy was delivered to him and that the premiums were paid there and all of the acts necessary to make a completed contract occurred in the State of Virginia.

(c) Another independent state ground upon which the instant decision rests and is sufficient to support said judgment without the decision of any federal question is that of the character of the insurance in question. The opinion ably points out the fact (Rec. 203-208) that at the time the certificate of insurance was issued to Pleasant Bolin there was no state law in Missouri, which permitted fraternal societies to operate in and do a general insurance business within the state. This being true, the Missouri courts have repeatedly held that the petitioner herein was, as a matter of law, doing business under the general insurance laws of the state (Rec. 205-206). The opinion points out that the petitioner nowhere alleged or proved or offered to prove that it had complied with any of the laws of the State of Missouri, and had been licensed to do business as a fraternal society. Therefore the conclusion that the petitioner herein was doing business under the general insurance laws of the state and that the policy of insurance issued herein was as a matter of law, an old line policy of life insurance, is irresistible and the fact that the defendant contended

that it was a fraternal society under the laws of the State of Nebraska did not, as a matter of law, make it a fraternal society in the State of Missouri.

In an early case, the Missouri Supreme Court (*Aloe v. Fidelity Mutual Life Association*, 164 Mo. 675) held: That the fact that an insurance company was chartered by another state as an assessment company, and was licensed to do business under its laws as an assessment company, did not make it such nor in any wise change its character or status under the Missouri law and it was further held therein that the liability of the company can in nowise be affected by its name, but the test of liability is the character of the contracts of insurance issued by it.

Conclusion.

Petitioner relies upon the following cases: *Modern Woodmen of America v. Mixer*, 267 U. S. 544, 69 L. Ed. 783, 45 Sup. Court Reporter 369, and *Supreme Council Royal Arcanum v. Green*, 237 U. S. 542, 59 L. Ed. 1100, 35 Supreme Court Reporter 724.

Respondents contend that these cases are not controlling for the reason that the points at issue were not involved therein.

In *Modern Woodmen v. Mixer*, *supra*, the one question involved was the validity of a bylaw subsequently enacted dealing with the long continued absence of a member and in *Supreme Council Royal Arcanum v. Green*, the point involved was the right of the society to increase the assessment rates of its members. In each

of these cases, controlling decision of the court of last resort of the place of the society's domicile was urged as a defense to the suits brought in the respective sister states involving the validity of the two aforementioned propositions. In each of the cases, the United States Supreme Court held that the full faith and credit provision of the constitution required that the controlling decisions be followed by the courts of the respective sister states.

In neither of those cases, did it appear that any of the following issues and independent state grounds were considered:

A. The fact that the contract of insurance was a Missouri contract.

B. The fact that the society was not a fraternal society and operating as such in the State of Missouri; but on contrary was doing business in Missouri as an old line life insurance company.

C. The fact that the society had never qualified to do an insurance business in the State of Missouri as a fraternal organization.

D. The question of *ultra vires* and estoppel and in neither of the two cases aforesaid was the question presented of the right of the society to issue the contract of insurance involved. In the instant case, there was no proof of any Nebraska law which would prohibit the issuance of such certificate.

E. Neither was there any question raised in said cases involving the right of the society to change the contractual relation with the holder thereof after his rights had become firmly established and the contract had been fully executed on his part

A reading of the opinion in this case reveals that all of the aforesaid issues were involved in the decision of this cause by the state court. They constitute the independent state grounds and are the substantial grounds upon which the opinion rests, independent of any federal question, thereby bringing this case within the scope of the decisions of this Honorable Court in the following cases:

New York Life Ins. Co. v. Cravens, 178 U. S. 389,
20 S. Ct. 952, 148 Mo. 583.

Mutual Life Ins. Co. v. of New York v. Johnson,
293 U. S. 335, 55 S. Ct. 154.

Northwestern Mutual Life Ins. Co. v. McCue, 223
U. S. 234, 32 S. Ct. 220, 56 L. Ed. 319.

Equitable Life Assurance Society v. Pettus, 140
U. S. 226, 11 S. Ct. 822, 35 L. Ed. 497.

We respectfully submit that the writ of certiorari should be denied.

L. L. LIVENGOOD,
RAY WEIGHTMAN,
J. S. SHINABARGER,
A. F. HARVEY,

All of Maryville, Missouri,
Attorneys for Respondents.

J.S.
L.L.
A.F.

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Supreme Court of the United States

OCTOBER TERM, 1938.

No. 31.

THE SOVEREIGN CAMP OF THE WOODMEN OF THE
WORLD, A CORPORATION, PETITIONER,

VS.

WILLIAM F. BOLIN, EDWARD E. BOLIN, SAMUEL
A. BOLIN ET AL., RESPONDENTS.

ON WRIT OF CERTIORARI TO THE KANSAS CITY COURT
OF APPEALS OF THE STATE OF MISSOURI.

RESPONDENTS' BRIEF.

MILES ELLIOTT,
of St. Joseph, Missouri,

RAY WEIGHTMAN,
of Maryville, Missouri,

E. H. GAMBLE,
of Kansas City, Missouri,
Attorneys for Respondents.

J. S. SHINABARGAR,
L. L. LIVENGOOD,
A. F. HARVEY,
of Maryville, Missouri,
Of Counsel.

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Supreme Court of the United States

OCTOBER TERM, 1938.

No. 31.

THE SOVEREIGN CAMP OF THE WOODMEN OF THE
WORLD, A CORPORATION, PETITIONER,

VS.

WILLIAM F. BOLIN, EDWARD E. BOLIN, SAMUEL
A. BOLIN ET AL., RESPONDENTS.

ON WRIT OF CERTIORARI TO THE KANSAS CITY COURT
OF APPEALS OF THE STATE OF MISSOURI.

RESPONDENTS' BRIEF.

I.

RESPONDENTS' STATEMENT.

As we do not think petitioner's statement is clear in some respects, we shall make a brief statement.

On June 3, 1896, petitioner issued to Pleasant Bolin, a resident of Nodaway County, Missouri, the policy or

certificate sued on, which provided for payment by petitioner of death benefits in the amount of one thousand dollars and a monument benefit of one hundred dollars (Rec. 22, 23).

This certificate was delivered to and accepted by the insured at Arkoe, in Nodaway County, Missouri (Rec. 21), after it had been signed by petitioner's consul commander and clerk of camp at Arkoe (Rec. 21) for the purpose of making it complete and binding, and it is not disputed that all the assessments were paid by Pleasant Bolin, the insured, to the clerk of petitioner's camp at Arkoe, Nodaway County, Missouri.

The certificate contained on its face a provision that payments should cease after twenty years (Rec. 22, 119). Pleasant Bolin made, and it was admitted by petitioner that he made, all the required payments for the period of twenty years and made no further payments thereafter (Rec. 119). Pleasant Bolin died July 18, 1933 (Rec. 8). Petitioner refused to pay the policy or certificate and this action was instituted thereon.

Respondents' petition, in somewhat conventional form, alleged the issuance of the certificate, compliance and performance by the insured, payment of all the required assessments for the prescribed period of twenty years, full performance by insured, the death of the insured and refusal of petitioner to pay the insurance (Rec. 4).

Petitioner's amended answer, on which the case was tried, admitted the essential facts alleged in the petition, but by way of defense pleaded that petitioner was and is a fraternal beneficiary association, incorporated under the laws of the State of Nebraska; that the payments to cease provision of the certificate was repealed by a bylaw enacted by the association in 1899; that the "payments to cease" provision of the certificate was *ultra vires* the

corporation; that, under the decision of the Supreme Court of the State of Nebraska in the case of *Trapp v. Sovereign Camp of the Woodmen of the World*, 102 Neb. 562, 168 N. W. 191, this provision had been held to be *ultra vires*, and, in substance, that under the full faith and credit clause of the Constitution of the United States the judgment of the Supreme Court of Nebraska in the Trapp case was binding on the courts of Missouri in the instant case (Rec. 7-16).

By their reply, respondents denied the matters of affirmative defense set up in petitioner's answer, pleaded facts showing that the contract was a Missouri contract and further pleaded: (1) That at the time of the issuance and delivery of the policy sued on petitioner did not have any license or authority to transact business in the State of Missouri and that the policy was, therefore, subject to and governed by the general insurance laws of the State of Missouri; (2) that insured, Pleasant Bolin, having fully and completely performed, complied with and completed the contract in every respect and having paid all the premiums, dues or assessments required for the prescribed period of twenty years, petitioner was estopped to say that any of its obligations under the policy, including the provision that payments should cease in twenty years, was *ultra vires* (Rec. 16-18).

The Circuit Court of Nodaway County, Missouri, in which the case was tried, found the issues for respondents and entered judgment accordingly. Petitioner perfected its appeal to the Supreme Court of Missouri on the ground that a question under the full faith and credit clause of the Federal Constitution was involved, which court, having no jurisdiction in the absence of a constitutional question, held that the decisive issue, upon which all others were dependent in the case, was the question of *lex loci contractus* and transferred the cause

to the Kansas City Court of Appeals, the court having the jurisdiction in the absence of a constitutional question (Rec. 114-117).

The Kansas City Court of Appeals affirmed the judgment of the circuit court on three principal grounds: (1) That petitioner not having been licensed to do business in Missouri as a fraternal beneficiary association at the time the certificate sued on was issued and not having shown that it had ever complied with the fraternal beneficiary laws of Missouri, the contract was subject to the general insurance laws of the State of Missouri; (2) that insured having fully performed the contract on his part and having made all the required payments for the prescribed period of twenty years and petitioner having accepted and retained the same, petitioner was estopped to plead that the payments to cease provision of the certificate was *ultra vires*; and (3) that petitioner could not, by an after-enacted bylaw, destroy or take away a substantial right of the insured under the contract of insurance (Rec. 118-136).

After having been denied a writ of certiorari to the Kansas City Court of Appeals by the Supreme Court of Missouri, petitioner applied to this court for a writ of certiorari, which was granted.

II.

SUMMARY OF ARGUMENT.

A.

The judgment of the state court rests (as we will show in following paragraphs) upon at least four independent grounds not involving a federal question and each of which is adequate to support the judgment. Therefore, this court is without jurisdiction and the writ of certiorari should be dismissed.

McCoy v. Shaw, 277 U. S. 302.

Lynch v. People of New York ex rel. Pierson,
293 U. S. 52.

Southwestern Bell Telephone Co. v. State of Oklahoma et al., 58 S. Ct. 528.

Eastern Building & Loan Ass'n v. Williamson, 189 U. S. 122.

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Wood Mowing & Reaping Machine Co. v. Skinner, 139 U. S. 293, 295, 297.

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Klinger v. Missouri, (Mo., 1872) 80 U. S. (13 Wall.) 257, 20 L. Ed. 635.

Kennebeck R. Co. v. Portland R. Co., (Me., 1872)
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Leathe v. Thomas, (Ill., 1907) 207 U. S. 93, 28 S. Ct. 30, 52 L. Ed. 118.

Arkansas S. R. Co. v. German Nat. Bank, (Ark., 1907) 207 U. S. 270, 28 S. Ct. 78, 79, 52 L. Ed. 201.

Eustis v. Bolles, 150 U. S. 361, 37 L. Ed. 1111, 14 S. Ct. 131.

Bilby v. Stewart, (Okla.) 246 U. S. 255, 38 S. Ct. 264, 62 L. Ed. 701.

(a) The state court found for respondents upon, and based its decision upon, the ground (among others) that insured having fully performed the contract and having made the required payments for the prescribed period of twenty years and petitioner having accepted and retained the payments, petitioner was estopped to plead that the provision of the certificate, providing that payments thereon should cease in twenty years, *was ultra vires*. A decision of the state court based upon an estoppel does not present a federal question.

Adams County v. Burlington, etc., R. Co., (Iowa, 1884) 112 U. S. 123, 5 S. Ct. 77, 28 L. Ed. 678.

Sherman v. Grinnell, (N. Y., 1892) 144 U. S. 198, 12 S. Ct. 574, 36 L. Ed. 403.

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Leonard v. Vicksburg, etc., R. Co., (La.) 198 U. S. 416, 25 S. Ct. 750, 49 L. Ed. 1108.

Enterprise Irrigation Dist. v. Farmers' Mut. Canal Co., (Neb.) 243 U. S. 157, 37 S. Ct. 318, 61 L. Ed. 644.

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- Mobile, etc., R. Co. v. Mississippi*, 210 U. S. 187.
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Prudential Ins. Co. v. German Mutual Ins. Co., 105 S. W. (2d) 1001.
Rechow v. Bankers' Life, 73 S. W. (2d) 1. c. 802.

(b) The decision of the state court was based upon the ground (among others) that the certificate sued on was subject to and governed by the general insurance laws of Missouri, for the reason that at the time it was issued, June 3, 1890, petitioner, a Nebraska corporation, was not licensed to do business in Missouri, and that from petitioner's amended answer and the state of the proof, it was to be presumed that petitioner has never complied with the fraternal beneficiary laws of Missouri so as to exempt it from the operation of the general insurance laws. This was purely a question of local law adequate to support the judgment, because the power of a state over foreign corporations doing business therein is equal to its power over domestic corporations.

- Orient Ins. Co. v. Daggs*, (Mo., 1899) 172 U. S. 557, 19 S. Ct. 281, 43 L. Ed. 552.
Equitable Life v. Pettus, (Mo., 1891) 140 U. S. 226, 11 S. Ct. 822, 35 L. Ed. 497.
N. Y. Life Ins. Co. v. Cravens, (Mo., 1900) 178 U. S. 389, 20 S. Ct. 962, 44 L. Ed. 1116; affirming the case in 148 Mo. 583.
Northwestern Nat. Life v. Riggs, (Mo., 1906) 203 U. S. 243, 27 S. Ct. 126, 51 L. Ed. 168.
Kern v. Legion of Honor, 167 Mo. 471.

Harris v. Switchmen's Union of North America,
237 S. W. 155.

Gruwell v. Knights & Ladies of Security, 126 Mo.
App. 496.

Brassfield v. Knights of Maccabees, 92 Mo. App.
102.

Thompson v. Royal Neighbors of America, 154
Mo. App. 109.

Schmidt v. Foresters, 228 Mo. 675.

Mathews v. Modern Woodmen, 236 Mo. 326.

(c) The certificate was delivered to and accepted by Pleasant Bolin, the insured, in the State of Missouri. He paid all of the dues and assessments thereon in Missouri. This makes it a Missouri contract to which the laws of Missouri apply and by the laws of which it is governed; and the issues concerning it are to be adjudicated in accordance with the laws of Missouri.

New York Life Ins. Co. v. Cravens, 178 U. S. 389.

Mutual Life Ins. Co. of New York v. Johnson,
293 U. S. 335.

Northwestern Mutual Life Ins. Co. v. McCue, 223
U. S. 234.

Equitable Life Assurance Society v. Pettus, 140
U. S. 226.

Ragsdale v. Brotherhood of Railroad Trainmen,
80 S. W. (2d) 272.

Johnson v. American Century Life Ins. Co., 249
S. W. 115.

Grant v. North American Benefit Corp., 8 S. W.
(2d) 1043.

Weed v. Bank Savings Life Ins. Co., 24 S. W.
(2d) 653.

Crohn v. U. C. T., 170 Mo. App. 273.

(d) The certificate sued on being a Missouri contract, the contract rights therein provided could not be

materially changed or modified by so-called by-laws subsequently enacted by the company, or changed or modified by the laws of Missouri or any other state.

Dessauer v. Supreme Tent, Knights of Maccabees,
278 Mo. 57, 210 S. W. 896.

Crnic v. Croatian Fraternal Union of America,
89 S. W. (2d) 683, 1. c. 691.

Dawson v. Knights of Maccabees of the World,
57 S. W. (2d) 748.

Ayers v. Grand Lodge A. O. U. W., (N. Y., '07)
138 N. Y. 280, 80 N. E. 1020.

White v. Park, (1872) 13 Wall. 646.

Barnitz v. Beverly, (Kan., '96) 163 U. S. 118.

W. B. Worthen Co. v. Thomas, (Ark., '34, Hughes,
J.) 292 U. S. 426.

W. B. Worthen Co. v. Kavanaugh, (Ark., '35,
Cardozo, J.) 295 U. S. 56.

Treigle v. Acme Homestead Ass'n, (La., '36,
Roberts, J.) 297 U. S. 189.

*International Steel, etc., Co. v. National Surety
Co.*, (Tenn., '36, Roberts, J.) 297 U. S. 657.

State of Indiana ex rel. Anderson v. Brand,
(Ind., '38, Roberts, J.) 58 S. Ct. 443.

Bedford v. Eastern Building & Loan Ass'n, 181
U. S. 227.

Coombes v. Getz, 285 U. S. 434.

B.

The Trapp case (Rec. 71-94), relied on by petitioner,
was not binding on the courts of Missouri in the instant
case.

34 C. J., Sec. 1422, p. 1004.

12 C. J., Sec. 1006, p. 1228.

Story's Equity Pleadings (14th Ed.), Sec. 208,
p. 196.

Street's Federal Equity Practice, Vol. 1, Secs.
542, 544, 547, 548.

Henderson v. Kentzer, 76 N. W. (Neb.) 881.

Parson Cattle Co. v. First Nat'l Bank of Arapahoe,
33 N. W. (Neb.) 270.

Cole v. Cunningham et al., 133 U. S. 107.

United Shoe Machinery Corporation v. United States, 258 U. S. 451.

Larsen v. Northland Transportation Co., 292 U. S. 20.

Southern Pacific R. Co. v. United States, 168 U. S. 1.

City of New Orleans v. Citizens Bank of Louisiana, 167 U. S. 371.

American Surety Co. v. Baldwin, 287 U. S. 156.

Old Wayne Mutual Life Ass'n v. McDonough et al., 204 U. S. 8, 27 S. Ct. 236.

C.

If the decision in the Trapp case were applicable (which it is not), it is in violation of Section 10, Article I, the contract clause, of the Constitution of the United States in that it holds a substantial provision of an insurance contract, to-wit, a provision that payments thereon should cease in twenty years, to have been invalidated by a subsequently enacted statute of the State of Nebraska.

Bank of Minden et al. v. Clement, 256 U. S. 126, 41 S. Ct. 408.

Treigle v. Acme, etc., Ass'n, 297 U. S. 189, 56 S. Ct. 408.

D.

The authorities relied on by petitioner are not applicable. The authorities cited by petitioner involve only questions of internal affairs or business management of the society or corporation, and questions arising in corporate receiverships or similar proceedings. None of them involves the construction or effect of a contract between the corporation itself and another party. None of them involves the rule of estoppel under the law of the forum.

III.

ARGUMENT.

A.

The judgment⁶ of the state court rests (as we will show in following paragraphs) upon at least four independent grounds not involving a federal question and each of which is adequate to support the judgment. Therefore, this court is without jurisdiction, and the writ of certiorari should be dismissed.

In *Arkansas S. R. Co. v. German National Bank*, 207 U. S. 270, the opinion tersely states the rule that where the judgment of the state court rests upon an independent nonfederal question, adequate to support the judgment, the writ of error or of certiorari must be dismissed:

"But, according to the well-settled doctrine of this court with regard to cases coming from state courts, unless a decision upon a federal question was necessary to the judgment, or in fact was made the ground of it, the writ of error must be dismissed. And even when an erroneous decision upon a federal question is made a ground, if the judgment also is supported upon another which is adequate by itself, and which contains no federal question, the same result must follow, as a general rule. Moreover, ordinarily this court will not inquire whether the decision upon the matter not subject to its revision was right or wrong."

There is no exception to this rule. While there are decisions, such as *McCoy v. Shaw*, 277 U. S. 302, holding that this rule will not be enforced where the nonfederal ground is so plainly unfounded that it may be regarded as essentially arbitrary or a mere device to prevent re-

view on a decision of a federal question, those cases do not present real exceptions.

(a) The state court found for respondents upon, and based its decision upon, the ground (among others) that, insured having fully performed the contract and having made the required payments for the prescribed period of twenty years and petitioner having accepted and retained the payments, petitioner was estopped to plead that the provision of the certificate, providing that payments thereon should cease in twenty years, was *ultra vires*. A decision of the state court based upon estoppel does not present a federal question.

The certificate sued on contained a provision on its face that payments should cease in twenty years. Bolin, the insured, made all the required payments for that period. Petitioner pleaded that this provision of the certificate was *ultra vires*, but the state court held that, the insured having fully performed the contract on his part and having made all of the required payments, and petitioner having accepted and retained those payments, petitioner was estopped to plead that this provision of the certificate was *ultra vires*. This ruling merely declared the well-established law of Missouri.

Illinois Fuel Co. v. Mobile & Ohio R. Co., 8 S. W. (2d) (Mo. Sup.) 834.

Cass County v. Mercantile Ins. Co., 188 Mo. 1.

Lysaght v. St. Louis Operative Stonemason's Ass'n, 55 Mo. App. 538.

City of Goodland v. Bank of Darlington, 74 Mo. App. 365.

St. Louis Drug Co. v. Robinson, 81 Mo. 18.

Prudential Ins. Co. v. German Mutual Ins. Co., 105 S. W. (2d) 1001.

Rechow v. Bankers Life, 73 S. W. (2d) 1. c. 802.

This court has consistently held that a decision of a state court based upon an estoppel does not present

a federal question. The legal questions here involved are not unlike those in *Enterprise Irrigation Dist. et al. v. Farmers Mutual Canal Co. et al.*, 243 U. S. 157, where Mr. Justice Van Devanter speaking for the court said:

"In view of the facts before recited we think it cannot be said that the ruling upon the question of estoppel is without fair support, or so unfounded as to be essentially arbitrary, or merely a device to prevent a review of the other ground of the judgment. We, therefore, are not at liberty to inquire whether the ruling is right or wrong. And it may be well to add that the question did not originate with the court. It was presented by the pleadings, was in the minds of the parties when the stipulation was made, and was dealt with by counsel and court as a matter of obvious importance.

"It is not urged, nor could it well be, that, as a ground of decision, the estoppel is not broad enough to sustain the judgment."

(b) The decision of the state court was based upon the additional ground that the policy was subject to the general insurance laws of Missouri, because at the time it was issued, petitioner, a Nebraska corporation, was not licensed to do business in Missouri, and that under petitioner's amended answer and the state of the proof, it was to be presumed that petitioner never complied with the fraternal beneficiary laws of Missouri.

In 1896, at the time the certificate sued on was issued, there was no provision under the laws of Missouri for the licensing of a foreign fraternal beneficiary association to do business as such in the state. The fact that petitioner was at that time doing business in Missouri without a license was undisputed. Also, the state court found that, from petitioner's amended answer and from the state of the proof as shown by the record, it was to be presumed that petitioner had never complied with the fraternal beneficiary laws of

Missouri so as to exempt it from the operation of the general insurance laws, and that, therefore, petitioner was not in position to contend that it was subject to fraternal beneficiary laws. The Kansas City Court of Appeals, in so holding, followed a long line of Missouri decisions, a few of which are:

Kern v. Legion of Honor, 167 Mo. 471.

Harris v. Switchmen's Union of North America, 237 S. W. 155.

Gruwell v. Knights & Ladies of Security, 126 Mo. App. 496.

Brassfield v. Knights of Maccabees, 92 Mo. App. 102.

Thompson v. Royal Neighbors of America, 154 Mo. App. 109.

Schmidt v. Foresters, 228 Mo. 675.

Mathews v. Modern Woodmen, 236 Mo. 326.

There can be no question that the power of a state over foreign corporations doing business therein is equal to its power over domestic corporations. The courts of Missouri have consistently held that no insurance society, whether foreign or domestic, can do business as a fraternal beneficiary association in the state until it shall have obtained a license so to do, and shall have complied with the fraternal beneficiary laws of Missouri. When petitioner undertook to do business in Missouri, it subjected itself to the laws of Missouri, and when it did business in Missouri without having obtained a license as a fraternal beneficiary association, it subjected itself to the general in- and without having complied with the fraternal insurance laws.

That the power of a state over foreign corporations doing business within its borders is equal to its power

over domestic corporations is so well settled as to require no argument.

Orient Ins. Co. v. Daggs, (Mo., 1899) 172 U. S. 557, 19 S. Ct. 281, 43 L. Ed. 552.

Equitable Life v. Pettus, (Mo., 1891) 140 U. S. 226, 11 S. Ct. 822, 35 L. Ed. 497.

New York Life Ins. Co. v. Cravens, (Mo., 1900) 178 U. S. 389, 20 S. Ct. 962, 44 L. Ed. 1116; affirming the case in 148 Mo. 583.

Northwestern Nat. Life v. Riggs, (Mo., 1906) 203 U. S. 243, 27 S. Ct. 126, 51 L. Ed. 168.

This was purely a question of local law, substantial and adequate to support the judgment and, like the question of estoppel, was covered by the pleadings (see Plaintiffs' Reply, Transcript of Record, page 16 *et seq.*) and was fully considered and definitely decided by the state court (Rec. 147-152).

(c) The decision of the state court was also based on the ground that the contract sued on was a Missouri contract and subject to the laws of Missouri. The certificate was delivered to and accepted by Pleasant Bolin, the insured, in the State of Missouri. He paid all of the dues and assessments thereon in Missouri. This makes it a Missouri contract to which the laws of Missouri apply and by the laws of which it is governed; and the issues concerning it are to be adjudicated in accordance with the decisions of the courts of Missouri.

The record in this case discloses that Pleasant Bolin lived in Missouri, that he made his application for insurance in Missouri, that the policy was delivered to him at Arkoe, Missouri, that all of the premiums were paid by the said Bolin in Missouri, and under this state of facts, clearly his contract of insurance is a Missouri contract. This has been the universal rule announced by this court and is followed by the Missouri decisions.

(d) This policy or certificate of insurance being a Missouri contract, the contract rights therein provided could not be materially changed or modified by so-called bylaws subsequently enacted by the company, or changed or modified by the laws of Missouri or any other state.

The contract of insurance in question was issued to Bolin on June 3, 1896. At that time there was no statutory provision in the State of Nebraska or no charter provision of petitioner (as shown by the pleading and proof) which prohibited the issuance of such a contract of insurance. Thereafter in 1899, the petitioner passed a bylaw which prohibited the further issuance of such contracts of insurance.

At the time the subsequently enacted bylaw was passed by the petitioner, the rights of Pleasant Bolin had become firmly vested under his contract. Therefore the petitioner had no right, by the enactment of said bylaw, to in any wise impair the contract rights of Bolin which had already accrued. We have heretofore shown that this contract of insurance is clearly an old line policy of insurance. It has well been said by the Missouri state court, in *Grnic v. Croatian Fraternal Union of America*, 89 S. W. (2d) local page 691:

"To permit defendant, after such right had become vested, by amendatory bylaws or otherwise, to change the benefits in any manner to which plaintiff had become entitled would be to permit it to change and nullify the contract entered into with plaintiff and take away from plaintiff a substantial right conferred by the contract of membership itself. This it cannot be permitted to do."

Not only is the foregoing rule followed by the Missouri courts, but there are many decisions of this court to the same effect. We call attention to the case of *Bedford v. Eastern Building & Loan Ass'n*, 181 U. S. 227.

In that case a certificate of stock had been issued to a member. At the time the certificate of stock was issued, the member had a right to apply and obtain a loan on such certificate of stock. Thereafter the state legislature passed an act prohibiting such loans. This court, in passing upon the subsequently enacted statute, held that the same impaired the obligation of an existing contract; that the member's rights to such contract having become vested, the same could not be taken away from him or in any way impaired by the passage of such statute.

B.

The Trapp case (Rec. 71-94), relied on by petitioner, was not binding on the courts of Missouri in the instant case.

(a)

In its answer (Rec. 7-16), petitioner did not plead that the courts of Missouri were conclusively bound by the judgment of the Supreme Court of Nebraska in the Trapp case, but simply pleaded, in effect, that in that case the Supreme Court of Nebraska had held the "payments to cease" clause of the certificate to be *ultra vires* the corporation. It is true that petitioner did plead that full faith and credit should be given to that decision. But as to whether it should be given credit only as a precedent and not as *res adjudicata* petitioner did not plead. Under the Missouri rules of pleading, the defense of *res adjudicata* must be pleaded in order to be available.

(b)

In any event, the judgment of the Supreme Court of Nebraska in the Trapp case could not have been bind-

ing on the courts of Missouri in the instant case, unless the Trapp suit measured up to all the requirements of a class case in which Bolin was a member of the class and in which his rights were in all respects common to those of Trapp.

34 C. J., Sec. 1422, p. 1002.

It is said in Story's Equity Pleadings (14th Ed.), Sec. 208, p. 196:

"Upon the general principles of courts of equity, there would be an impropriety in binding either the legal claimants or equitable claimants unless they were fully represented and permitted to assert their rights before the court."

In Street's Federal Equity Practice (1st Ed.), Vol. I, Sec. 542, the rule is announced that joinder will not be permitted where there are separate interests.

The same author says, in Section 544, it is required that the person who sues as a representative of a class must have an actual interest in the controversy in like right with those he proposes to represent, and that the relation of the parties must be such that the representative and represented could properly be joined as co-plaintiffs, if practicable to do so.

In Section 547 of the same work, it is stated that in a true class suit the subject matter of the suit is a fund or property over which the court can and does acquire an effective jurisdiction by the joining of some persons as plaintiffs or defendants who may be considered representatives of all who are interested in the fund or property.

In Section 548, the author defines spurious class suits and describes them as suits not concerned with a fund or property at all but with personal liability, and points out that, in spurious class suits, suit is brought by or

against numerous parties in respect of personal liability. The author further says, in that section, that, if relief is sought against an unincorporated association or individuals or against numerous defendants who are acting together, it is spurious, and that the decree entered in a suit against only a few cannot be effective against others who are not actually made parties, unless and until they are formally brought in and bound by the decree.

There are at least six reasons why the Trapp suit was not binding as a class case on the rights of Bolin and his beneficiaries, the respondents herein.

1. At the time the Trapp suit was filed, March 29, 1916, no right of action existed on the Bolin policy, because at that time payments had not been made on the Bolin policy for the prescribed period of twenty years. In the Bolin case that period did not expire until June 1, 1916.

2. While the petition in the Trapp case stated that Trapp brought the suit for himself and others similarly situated, the prayer of that petition did not ask for relief for anyone except Trapp and did not ask for relief for anyone else or for any class or members of a class; and the judgment rendered in the Trapp case did not purport to apply to any other person of the same class as Trapp or to any other class.

3. As we have before shown, the Bolin policy was governed by the old line insurance laws of Missouri, because petitioner had not obtained a license to do business in Missouri at the time the policy was issued. In his suit in Nebraska, Trapp did not plead or assert his rights under the laws of Missouri; and when he failed to do so he segregated himself from the class, to which Bolin belonged, holding Missouri policies or certificates.

4. In the instant case, there was a good and sufficient plea of estoppel or to set up the defense of *ultra vires*, which defense was upheld by the Missouri courts, while in the Trapp case there was no plea sufficient, under the Nebraska law, to raise the issue of estoppel. The Nebraska courts hold that in order to plead estoppel in the State of Nebraska, it is necessary to plead the facts constituting the estoppel. To merely allege that the other party is estopped by his acts, as did Trapp, without pleading what those acts were, is but a statement of a legal conclusion and ineffectual, under the laws of Nebraska, for an adjudication of the question of estoppel.

Henderson v. Kentzer, 76 N. W. (Neb.) 881.

Paxton Cattle Co. v. First Nat'l Bank of Arapahoe,
33 N. W. (Neb.) 270.

5. The Trapp case cannot be deemed a class suit as to Bolin, because the Trapp suit is based merely on a resolution of petitioner's executive council, providing for paid-up certificates, and the fraternal insurance laws of Nebraska, whereas the Bolin suit is based on a certificate or policy of insurance issued in Missouri, governed by the laws of Missouri and protected by the contract clause of the Federal Constitution.

In his petition Trapp prayed for a decree commanding and enjoining the petitioner to forthwith issue to him a paid-up certificate of membership. In order for Trapp to maintain his suit, it was necessary for him to base his petition upon, and he did base his petition upon, a mere resolution of petitioner's executive council adopted January 18, 1893, providing for paid-up certificates and the fraternal insurance laws of Nebraska. The instant case is based upon the certificate itself and upon the right which accrued to Bolin's beneficiaries after his death.

There was no showing that Bolin acquiesced in the

Trapp case, knew anything about it or had anything to do with it, and there is no showing that the rights upon which he relied were in any way represented or adjudicated in the Trapp case.

6. There was no showing in the record of the Trapp case that the rights or interests of any holder of a policy or certificate, under the Missouri laws, were fairly represented or protected; that any such certificate holder had any knowledge of the suit or any opportunity to have his interests fairly protected, or represented, or knew anything about the Trapp suit or in any manner acquiesced therein. Therefore, the Trapp case did not meet the requirements of a class suit.

Old Wayne Mutual Life Ass'n v. McDonough et al., 204 U. S. 8, 27 S. Ct. 236.

(c)

The local questions under the Missouri law, to-wit, that policies issued by petitioner in the State of Missouri, when it did not have a license to do business as a fraternal beneficiary association in the state, and the question of estoppel of a corporation to plead *ultra vires* where the contract has been fully performed by the other party, not having been raised or adjudicated in the Trapp case, the judgment in that case was not binding on Bolin or on his beneficiaries in the instant case.

Cole v. Cunningham et al., 133 U. S. 107.

United Shoe Machinery Corporation v. United States, 258 U. S. 451.

Larsen v. Northland Transp. Co., 292 U. S. 20.

Southern Pacific R. Co. v. United States, 168 U. S. 1.

City of New Orleans v. Citizens Bank of Louisiana, 167 U. S. 371.

(d)

It not having been shown that Bolin was in any manner a party to, or notified of, the Trapp suit and Bolin not having been represented by Trapp as a member of a class and not having in any manner acquiesced in the judgment in the Trapp suit, to hold that the judgment in that case deprived Bolin of his right to a paid-up insurance policy, after he had made all the required payments for the specified period, would have been to deprive him of his property without due process of law, in violation of the due process clause in the Fourteenth Amendment to the Constitution of the United States.

American Surety Co. v. Baldwin, 287 U. S. 156.

C.

If the decision in the Trapp case were applicable (which it is not), it is in violation of Section 10, Article I, the contract clause, of the Constitution of the United States in that it holds a substantial provision of an insurance contract, to-wit, a provision that payments thereon should cease in twenty years, to have been invalidated by a subsequently enacted statute of the State of Nebraska.

The decision of the Nebraska court in the Trapp case is founded solely upon the opinion of the Supreme Court of Nebraska in *Haner v. Grand Lodge, A. O. U. W.*, 168 N. W. 189. As we will show, the decision in the Trapp case is in effect a ruling that the payments to cease provision of the Trapp insurance certificate which was issued March 11, 1895, was invalidated by a statute of Nebraska enacted in 1897. Therefore, the decision in the Trapp case is itself violative of the contract clause of the Federal Constitution, Article I, Section 10, and cannot bind the courts of Missouri or any other state.

Haner v. Grand Lodge, A. O. U. W., supra, was an action on a policy which the opinion says was issued in 1888. In May, 1907, nineteen years after the Haner policy was issued, the association adopted a new bylaw which provided that a member on attaining the age of seventy, irrespective of disability, should be entitled to an endowment. Haner sued for that endowment, basing his action upon the 1907 bylaw of the association. It appeared that he was not disabled, though he had attained the age of seventy. The Supreme Court of Nebraska held that this bylaw was *ultra vires* of the corporation under a statute of Nebraska passed in 1897, ten years before the bylaw was enacted upon which Haner's suit was based.

The Haner opinion cites this statute as it appears in Neb. Rev. St., 1913, Sec. 3295. But the fact is that it first appears in the Nebraska Session Laws, 1897, Ch. 47, p. 266. Prior to 1897, the Nebraska law permitted a Nebraska fraternal association to issue any kind of policy that an old line insurer could issue, with no restriction of any kind in that respect by reason of its being a fraternal association.

In holding that the Trapp case was governed by the decision in the Haner case and that under the Haner case the payments to cease provision of the Trapp certificate was *ultra vires*, the Supreme Court of Nebraska necessarily held that under the statute of Nebraska passed in 1897, two years after the Trapp policy was issued, the payments to cease provision thereof was invalidated.

In so holding, the decision in the Trapp case plainly violates the contract clause of the Federal Constitution. That a provision of an insurance contract for a paid-up certificate is a substantial right or obligation does not permit of argument. While the ruling of the Supreme

Court of Nebraska in the Trapp case did not destroy the entire contract, it impaired the obligation of the contract by destroying a substantial provision thereof.

In *Bank of Minden et al. v. Clement*, 256 U. S. 126, this court, quoting with approval the language of *Planters' Bank v. Sharp*, 6 How. 327, 12 L. Ed. 447, said:

"One of the tests that a contract has been impaired is that its value has by legislation been diminished. It is not, by the Constitution, to be impaired at all. This is not a question of degree or manner or cause, but of encroaching in any respect on its obligation, dispensing with any part of its force."

To the same effect see

Treigle v. Acme, etc., Ass'n, 297 U. S. 189, 56 S. Ct. 408.

D.

The authorities relied on by petitioner are not applicable. The authorities cited by petitioner involve only questions of internal affairs or business management of the society or corporation, and questions arising in corporate receiverships or similar proceedings. None of them involves the construction or effect of a contract between the corporation itself and another party. None of them involves the issue of estoppel under the law of the forum.

Most of the argument of petitioner has been answered by what we have said in the preceding parts of this brief. However, we will briefly notice some of the arguments made by petitioner.

(a) We recognize that the decisions of the courts of the domicile of a corporation or an association as to matters resting solely upon the mere fact of membership in the association or corporation, such as fixing the rate

of assessments by insurance societies, such as the obligations and liabilities of a member or stockholder in an association or corporation purely and solely by reason of the fact of membership, are binding upon the courts of other states, as is held in *Supreme Council of Royal Arcanum v. Green*, 237 U. S. 531, and like cases.

There can hardly be a question that the liabilities or obligations of a stockholder as such in a corporation, as created by the laws of its home state, are controlled by those laws and that the decisions of that state construing those laws are binding upon the courts of other states, as is held in *Converse v. Hamilton*, 224 U. S. 243, and similar cases cited by petitioner.

But none of those cases has any applicability here, because in the instant case the court must consider the rights created by a separate and independent contract between an association or corporation and another party. Certainly, the fact that the other party happens to be a member of the association or a stockholder in the corporation does not exempt the contract from the operation of the laws of the state where this independent and separate contract is made, executed and performed.

In the decisions cited by petitioner involving fraternal and assessment insurance associations, the courts have said that membership may be likened to marriage or to the family relation. This comparison is not inapt so far as it applies only to the mere relation of membership. To carry the comparison further and to compare the relationship between the holder of an insurance contract and the association is to show that the comparison is not apt.

The members of a family may be subject to the rules and regulations made by the head of the family for the control of the family affairs, but, when the family enters into a business contract with a member of the family, the law of contracts controls just the same as if the

contract had been made with a stranger. If the members, through the head of the family or other representatives, go to another state and in that other state enter into a business contract with a member of the family, resident in such other state, which is executed, delivered and to be performed in that other state, the contract is governed by the laws of that state and not by the laws of the state of the family's domicile.

While *Modern Woodmen of America v. Mixer*, 267 U. S. 544, may at first glance appear to be an exception to the rule announced in *Royal Arcanum v. Green*, *supra*, and like cases, careful consideration of the *Mixer* case reveals that it makes no such exception. No provision of a contract was under consideration in the *Mixer* case. This court, in that case, merely held that the decision of the Supreme Court of Illinois, in which state the association was incorporated, construing a bylaw of the corporation, which bylaw pertained to the remedy rather than the substance of the contract, was binding upon the courts of other states.

If the *Mixer* case had undertaken to hold that an insurance association could by an after-enacted bylaw impair a substantial right under a contract of insurance, it would have announced an unsound rule of law which could not be followed. For neither party to a contract can, by his act without the consent of the other party, impair the obligation of the contract.

Further, in *Steen v. Modern Woodmen*, 296 Ill. 164, 129 N. E. 546, the Illinois decision under consideration in the *Mixer* case, nobody but the plaintiff Steen, and the defendant insurance society was a party to the cause. The judgment in that case was subject to review in a similar action in the courts of Illinois between another plaintiff and the same defendant. It amounted only to a

precedent and not a conclusive judgment as to other parties in the courts of Illinois. So, the only effect of the Mixer case, in its last analysis, is a holding that as to the rights and obligations arising from the naked fact of membership in a corporation, the law of the state of its domicile controls.

Moreover, the Mixer case involved no issue of estoppel, and does not conflict with other decisions of this court holding that such issue is governed by the law of the forum as a part of the public policy of the state, and that no provision of the constitution has any bearing thereon, and that if the state court decision is based on the state's rules of estoppel, it will not be reviewed by this court on certiorari.

(b) It was wholly immaterial in the instant case whether the "payments to cease" provision of the contract sued on was or was not *ultra vires* the petitioner under the laws of Nebraska, because under the law of Missouri petitioner was estopped to plead as a defense in a Missouri court that this provision of the contract was *ultra vires*. This part of petitioner's argument is fully answered by Section A, Paragraph (a), of our argument.

(c) Petitioner's argument that the Trapp case was a class suit and binding upon respondents in the instant case is answered by Section B of our argument.

(d) This part of petitioner's argument is answered by what we have said in the preceding paragraphs of this section of our argument.

(e) Petitioner's argument is answered by Section A of our argument.

(f) Petitioner's argument is answered by Paragraph (a) of this section of our argument.

We note, however, that petitioner contends that where a constitutional question is present the plea of estoppel must be absent. It has been consistently held by this court that one may waive the right to assert, or by his conduct be estopped to assert, a constitutional right just the same as he can waive or be estopped to assert any other right.

Leonhard v. Vicksburg, etc., R. Co., (La.) 198 U. S. 416, 25 S. Ct. 750, 49 L. Ed. 1108.

Pierce v. Somerset R. Co., (Me., '98) 171 U. S. 641, 19 S. Ct. 64, 43 L. Ed. 316.

Wall v. Parrot Silver, etc., Co., (Mont., '17) 244 U. S. 407, 37 S. Ct. 681, 61 L. Ed. 1229.

Pierce Oil Co. v. Phoenix Ref. Co., (Okla., '22) 259 U. S. 125, 42 S. Ct. 440, 66 L. Ed. 855.

St. Louis Malleable Casting Co. v. George C. Prendergast Construction Co., (Mo.) 43 S. Ct. 178, 260 U. S. 469, 67 L. Ed. 351.

(g) Petitioner's argument is answered by what we have said in the preceding parts of this brief.

Respectfully submitted,

MILES ELLIOTT,
of St. Joseph, Missouri,
RAY WEIGHTMAN,
of Maryville, Missouri,
E. H. GAMBLE,
of Kansas City, Missouri,
Attorneys for Respondents.

J. S. SHINABARGAR,
L. L. LIVENGOD,
A. F. HARVEY,
of Maryville, Missouri,
Of Counsel.

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CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1938.

No. 31.

THE SOVEREIGN CAMP OF THE WOODMEN
OF THE WORLD, PETITIONER,

VS.

WILLIAM F. BOLIN, EDWARD E. BOLIN AND
SAMUEL A. BOLIN ET AL., RESPONDENTS.

ON WRIT OF CERTIORARI TO KANSAS CITY COURT
OF APPEALS OF THE STATE OF MISSOURI.

PETITION FOR REHEARING.

MILES ELLIOTT,
of St. Joseph, Missouri,
Counsel for Respondents.

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PETITION FOR REHEARING.

Come now the respondents and respectfully pray the court to set aside the judgment and to grant them a rehearing, for the following reasons:

I.

The opinion of the court erroneously holds that in the case of *Trapp v. Sovereign Camp of the Woodmen of the World*, 102 Neb. 562, the Supreme Court of Nebraska decided that petitioner never had power under the law of

Nebraska to issue a certificate containing a provision that payments thereon should cease in a specified period.

II.

The opinion erroneously holds that the doctrine of estoppel could not be invoked in the courts of Missouri against the defense of *ultra vires*, where the contract has been fully performed by the other party.

III.

The opinion erroneously holds that it appears from the record in the Trapp case that the issue of estoppel to plead the defense of *ultra vires* was decided by the Supreme Court of Nebraska in that case.

IV.

The opinion erroneously assumes the *Trapp Case, supra*, was a class suit and fails to decide the vital issue of whether that case was, in fact, a class suit.

V.

The opinion erroneously holds, in substance and effect, that a contract between a fraternal beneficiary society and a member can be changed or impaired at will by the society without the consent of the other party to the contract.

Respectfully submitted,

MILES ELLIOTT,

Counsel for Respondents.

SUGGESTIONS IN SUPPORT OF PETITION FOR REHEARING.

I.

An examination of the opinion in the Trapp case (Record, page 93) shows that the opinion of the Supreme Court of Nebraska in that case, except for the statement of facts and issues, consisted of only five lines, to-wit:

"The main questions presented have been determined adversely to plaintiff in the case of *Haner v. Grand Lodge A. O. U. W.*, 20280, decided June 15, 1918, and on the authority thereof the judgment of the district court is affirmed."

Haner v. Grand Lodge A. O. U. W., which is the sole basis of the opinion in the Trapp case, merely holds that, under a statute of Nebraska passed in 1897, a bylaw enacted in 1907 by Grand Lodge A. O. U. W. providing that a member on attaining the age of seventy, irrespective of disability, should be entitled to an endowment, was *ultra vires*. Therefore, the decision of the Nebraska court in the Trapp case amounted only to a holding that under the aforesaid statute of Nebraska, passed in 1907, the "payments to cease" provision of the Trapp certificate was *ultra vires* at the time Trapp's suit was decided in 1918. This was far short of a ruling that petitioner never had power under the law of Nebraska to issue such a certificate," which ruling the opinion in the instant case finds the Supreme Court of Nebraska to have made in the Trapp case.

II.

In holding that the doctrine of estoppel could not be invoked in the courts of Missouri against the de-

fense of *ultra vires* in the case at bar, the opinion strikes down the rights of the courts of each of the several states to determine the public policy of the state with reference to the conduct of litigants in its courts.

While the opinion of the Kansas City Court of Appeals in this case does hold that the "payments to cease" provision of the policy was not *ultra vires* under the law of Nebraska, this ruling was not necessary to the decision and judgment in the case, and, as shown by our brief, there are other independent grounds upon which the case was decided and adequate to support the judgment.

Suppose that the Kansas City Court of Appeals had ruled that this provision of the policy was *ultra vires* under the law of Nebraska at the time the policy was issued. Still, under the law in Missouri, as declared in the decisions of the Missouri Courts, listed on pages 6 and 7 of respondent's brief, petitioner was estopped to plead *ultra vires* as a defense when the contract had been fully performed by the other party. This was purely a question of local law.

Estoppel to plead *ultra vires* does not depend upon whether the act of the corporation, under consideration, was or was not *ultra vires*, but is based upon the proposition that where the contract has been fully performed by the other party it is unconscionable and against the public policy of the state to permit a corporation to plead that its contract was *ultra vires*. Such an estoppel applies without regard to whether the contract was or was not *ultra vires*.

To rule otherwise is to completely destroy and abolish the well-established principle of estoppel to plead *ultra vires*, which has been recognized and declared by this court in the cases cited on page 6 of our brief, as well as in the other cases, and by the courts of most of the states of the Union.

An *ultra vires* contract, fully performed, of a building and loan association, a similar organization, made with

one of its members, is enforceable, even though *ultra vires*.

Eastern Building & Loan Association of Syracuse v. Bright Williamson, 189 U. S. 122, 23 S. Ct. 527, 1. c. 530.

Undoubtedly, the Missouri courts were within the rights of the state under the Federal Constitution in ruling, as they have, that a Missouri corporation or fraternal insurance association is estopped to plead that its contract was *ultra vires* after the contract has been fully performed by the other party. To hold that the Missouri courts cannot apply this same doctrine to a litigant in those courts, because it happens to have been incorporated in another state, though doing business in Missouri, is to hold that the power of a state over foreign corporations doing business therein is not equal to its power over domestic corporations. Such a ruling conflicts with the decisions of this court in *Orient Ins. Co. v. Daggs*, 172 U. S. 557; *Equitable Life v. Pettus*, 140 U. S. 226; *New York Life Ins. Co. v. Cravens*; *Northwestern Nat. Life v. Riggs*, 203 U. S. 243 (all cited at page 15 of our Brief); and other decisions of this court.

III.

In holding that the Supreme Court of Nebraska in the Trapp case considered the issue of estoppel of petitioner to plead *ultra vires* and that the Supreme Court of Nebraska determined that issue adversely to the plaintiff in that case, the opinion of the court in the case at hand is clearly erroneous.

The petition in the Trapp case alleged that for the purpose of inducing Trapp to become a member of the organization defendant in that case, petitioner here, made certain false and wrongful statements and representations (Record, pages 72, 73). It is true that defendant's answer in that case pleaded *ultra vires*. But, certainly, plaintiff's reply (Record, page 89), did not plead that the defendant

in that case was estopped to plead *ultra vires*. The only plea of estoppel alleged or attempted to be alleged in the reply in the Trapp case was "that by reason of the acts of defendant it is forever estopped from denying the validity of its contract with the plaintiff" (Record, page 89).

The only acts of defendant alleged as a basis of estoppel were false representations in the procurement of the contract—not full performance of the contract by the other party and retention of the benefits by the corporation.

A fair reading of the pleadings in the Trapp case will disclose that there was no plea of estoppel to plead *ultra vires* and will lead to the inescapable conclusion that the only question of estoppel in that case was an estoppel alleged to have arisen by reason of wrongful and false representations by which Trapp was induced to apply for the contract of insurance.

IV.

A vital issue in the present case was whether the Trapp case was a class suit.

Unless the Trapp case was a class suit, it was not binding on the courts of Missouri. In any event, if it was a class suit, it could have been, and yet can be, reviewed and reconsidered by the Nebraska courts in a suit, involving even the same issues, between another plaintiff and the same defendant. If it could be reviewed and reconsidered by the courts of Nebraska in another case, it is not binding on the courts of Missouri in the instant case.

At pages 17 to 21 of our brief, we earnestly undertook to show, and we submit that we did show, that the Trapp case was not a class suit and, therefore, not binding on the courts of Missouri in the present case. The opinion does not discuss or decide that issue and apparently ignores it. In fact, the opinion seems to assume that the Trapp case was a class suit.

This was a vital issue in the case, upon a correct determination of which a proper conclusion necessarily depended.

V.

The ruling that membership in an incorporated beneficiary society subjects to the law of the state of its domicile insurance contracts, issued by the society to residents of other states, while it is doing business in such other states, is based upon a fundamental misconception of fraternal beneficiary insurance.

Briefly stated, the origin and basis of fraternal beneficiary insurance is this: A group of persons band themselves together and set up an organization, which they incorporate, having certain elements or features of fraternalism, and through which medium all the members, as a corporation, enter into an insurance contract with each of the individual members. Each of the members agrees to be bound by the constitution, laws and by-laws, then existing or thereafter adopted, as to the management of the affairs of the society, and as to his conduct, etc., but the insurance contract is a separate and independent contract. It may be a contract uniform and common to all the members of the society, or it may be a contract of one kind or character with some members and of another kind or character with other members (which latter is the system under which petitioner operates).

In practically all instances the contract itself provides, in substance, that the premiums or assessments may be changed by the society from time to time, as appears necessary. Certainly, under that provision of the policy, any action of the society, with reference to changing the rate of assessment, is controlled by the law of the state of its domicile. But that flows from the contract itself.

The contract may expressly provide that it can be amended by the society without the consent of the in-

sured. Or, like the policy in the instant case, the contract may merely provide it shall be liable to forfeiture if the insured shall not comply with the constitution, laws and bylaws in effect at the time the contract is made, or which may be thereafter enacted, in which case the provision regarding subsequently enacted laws or bylaws is construed to mean such bylaws as may be thereafter enacted to govern and regulate the conduct and management of the affairs of the society, and to prescribe the duties of the members, but not to change and nullify the contract of insurance entered into with the members.

An examination of *Royal Arcanum v. Green*, 237 U. S. 537; *Hartford Life Insurance Co. v. Barber*, 245 U. S. 146, and similar decisions of this court, will disclose that those cases deal only with a right or power, such as increasing the rate of assessments, expressly conferred upon the society by the contract of insurance. Those decisions are sound, but they have no applicability to the present case, in which the right or power in question is not one given to the society by the contract of insurance but is a positive and unconditional right of the insured under the contract.

Everything that is said in the opinion as to the effect of membership in a fraternal insurance society may be said, with equal force and applicability, of membership in any mutual insurance company, such as the multitudinous mutual old line companies and the assessment companies. In all those companies the policyholder is both insurer and insured. If the mere fact of membership in a fraternal benefit society subjects all its contracts, wherever issued, to the law of the state of its domicile, then this court cannot consistently hold that contracts of old line mutuals and of assessment companies are not subject to the same rule, for in those companies the insured is likewise a member and, in most of them, legally entitled to a vote and voice in their management.

CONCLUSION.

We hope the court will pardon us in urging upon the court the importance of the decision in this case as a precedent. The rights of thousands upon thousands of policyholders in fraternal beneficiary societies, including petitioner, will be affected by the decision in this case. In addition, the opinion and decision, if allowed to stand, must be taken by the bar and bench as a precedent holding that the courts of a state cannot declare the public policy of the state as to the conduct of litigants in its courts.

The petition for rehearing should be sustained and a rehearing should be granted.

Respectfully submitted,

MILES ELLIOTT,

Counsel for Respondents.

We, the undersigned, counsel for respondents in the above-entitled cause, hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

Witness our hands this 23rd day of November, 1938

RAY WEICHTMAN,

E. H. GARNER,

A. F. HARVEY,

L. L. LIVINGOOD,

MILES ELLIOTT,

Counsel for Respondents

State of Missouri, County of Buchanan, ss.

Miles Elliott, being duly sworn, upon his oath states that he is attorney for, and of counsel for, respondents in the above-entitled cause, and that the foregoing petition for rehearing is presented in good faith and not for delay.

Miles Elliott.

Subscribed and sworn to before me, this 23rd day of November, 1938. My commission expires October 1, 1940.

(Seal)

Mary McJunkin,
Notary Public.

SUPREME COURT OF THE UNITED STATES.

No. 31.—*Oregonian Texas, 1898.*

The Sovereign Camp of the Woodmen
of the World, Petitioner.

vs.
William F. Bolin, Edward E. Bolin
and Samuel A. Bolin, et al.

On Writ of Certiorari to
Lancaster City Court of
Appeals of the State of
Missouri.

[November 7, 1898.]

Mr. Justice ROBERTS delivered the opinion of the Court.

We granted certiorari because of the claim that the judgment of the court below failed to accord full faith and credit to the public acts, records, and judicial proceedings of the State of Nebraska as required by Article IV, Section 1 of the Constitution.

The petitioner is a fraternal beneficiary association organized under the laws of Nebraska, having a lodge system, a ritualistic form of work, and a representative form of government. It has no capital stock, and transacts its affairs without profit and solely for the mutual benefit of its members and their beneficiaries. It makes provision for the payment of death benefits by assessments upon its members and issues to members certificates assuring payment of such benefits.

In 1885 the petitioner adopted a by-law authorizing the issue of life membership certificates. Under this by-law a member entering the order at an age greater than 45 years was entitled to life membership without the payment of further dues and assessments when the certificate had been outstanding 20 years. In June 1890, while the by-law remained unrevoked, Pleasant Bolin, who was over 45 years of age, joined a Missouri lodge of the petitioner and received a certificate of membership which recited that while in good standing he would be entitled to participate in the beneficial fund to the amount of \$1,000 payable to his beneficiaries and to the sum of \$100 for paying a monument at his grave. The certificate recited that it was issued subject to all the conditions named in the constitution and laws of the fraternity and was endorsed with the words "Payable to issue after 20 years."

After Bolin's death the respondents, as beneficiaries, brought action to recover upon the certificate. The petitioner's answer set

2 *Sovereign Camp, Woodmen of the World vs. Bolin et al.*

up that Bolin had ceased to pay the required dues and assessments in July 1916, and his certificate had therefore become void; that the by-law making the certificate fully paid after twenty years was *ultra vires* the association and had been so declared by the Supreme Court of Nebraska in a class suit brought by one Trapp, the holder of a certificate similar to that of Bolin; that, under Article IV, Section 1, of the Constitution, full faith and credit must be given by the courts of Missouri to this decision of the Supreme Court of Nebraska. The respondents replied that the contract was made and delivered in Missouri and was to be construed and enforced according to Missouri law; that, at the date of its consummation, the petitioner had no license or authority to transact business in Missouri as a corporation or otherwise, and the certificate was therefore to be considered as issued pursuant to, and governed by, the general insurance laws of Missouri; that Bolin having fully performed in accordance with the terms of the certificate, the petitioner was estopped to plead *ultra vires*; and that in truth the contract was not *ultra vires* the petitioner.

A jury was waived and the case was tried to the court. The respondents proved the issue of the certificate and Bolin's payments for twenty years thereafter. The petitioner proved the adoption of the by-law purporting to authorize the issue of "payments to cease" certificates; and put in evidence an exemplified copy of the record in *Trapp v. Sovereign Camp of the Woodmen of the World*, 102 Neb. 562, wherein it was decided that petitioner never had power under the law of Nebraska to issue such a certificate. Judgment went for the respondents. The petitioner appealed to the Supreme Court of Missouri, which remanded the cause to the Kansas City Court of Appeals¹ on the ground that it involved no constitutional question. The latter affirmed the judgment² and adhered to its decision on rehearing.³

The court below based its decision on the following grounds:

Under the law of Missouri the certificate was a Missouri contract because it was delivered to Bolin in Missouri and he made his payments there; all issues respecting rights arising out of the contract must, therefore, be adjudicated according to the decisions of the Missouri courts. The question then arises what

¹ *Bolin v. Sovereign Camp*, W. O. W., 339 Mo. 618.

² *Bolin et al. v. Sovereign Camp*, W. O. W., — Mo. App., —, 112 S. W. 2d, 582.

³ *Bolin et al. v. Sovereign Camp*, W. O. W., — Mo. App., —, 112 S. W. 2d, 592.

system of local law is applicable,—that relating to fraternal beneficiary societies or that applicable to old line insurance companies. At the time the contract was made there was no local statute providing for the licensing of foreign fraternal beneficiary societies. Under the decisions of the Missouri courts the petitioner must, therefore, be denied the immunities extended by statute to domestic fraternal beneficiary associations and must be taken to have been doing business in Missouri under the State's general insurance laws, and the certificate must be regarded as a contract of general or old line insurance. This conclusion is not altered by the nature of the society granting the insurance because the character of the insurance, so far as Missouri is concerned, depends on the terms of the contract only. Whatever may be the character of the petitioner in the eye of the Nebraska law it need not have the same character in Missouri. Whether it is a fraternal beneficiary society when sued in Missouri is a question of local law. Even if the issue of the certificate be an *ultra vires* act under the law of Nebraska it does not follow that it is such under the law of Missouri. The contract is not *ultra vires* under the law of Missouri or, if so, the petitioner may not plead *ultra vires* because, in the light of Missouri law, the contract is an insurance contract with an old line insurance company and the petitioner, under Missouri decisions, cannot, in the circumstances disclosed, avail itself of the fact that the contract was in excess of its charter powers.

The court refused to give force or effect to the decision of the Supreme Court of Nebraska in *Trapp v. Woodmen*, *supra*, saying that case did not hold the issue of such a certificate *ultra vires* in the sense that it was prohibited by positive statute; that the contract being a Missouri contract its *ultra vires* character must be adjudged by the local law irrespective of what the courts of the domicile had held; that the respondents in the present case relied on an estoppel of the petitioner to plead *ultra vires*, whereas no such issue was presented or decided in the *Trapp* case.

We hold that the judgment denied full faith and credit to the public acts, records, and judicial proceedings of the State of Nebraska.

First. The beneficiary certificate was not a mere contract to be construed and enforced according to the laws of the state where it was delivered. Entry into membership of an incorporated beneficiary society is more than a contract; it is entering into a complex and abiding relation and the rights of membership are governed by the law of the state of incorporation. Another state, wherein the

certificate of membership was issued, cannot attach to membership rights against the society which are refused by the law of the domicile.⁴

Second. The circumstance that at the time the certificate was issued domestic fraternal societies were exempted from the operation of the general insurance law of the state, and no similar exemption was extended to foreign societies, cannot enlarge the statutory and charter powers of such a foreign society. The fundamental error of the court below springs from a misapprehension of the effect to be given to the absence of provisions exempting foreign beneficiary associations from the statutes applicable generally to old line life insurance companies. Missouri has statutes affecting the validity and enforceability of stipulations inserted in life insurance policies and other statutes dealing with procedure in actions upon such policies. In 1879 a statute was passed authorizing the incorporation of fraternal beneficiary societies and exempting them from the operation of the general laws of the State in respect of insurance companies.⁵ An act of 1881 exempted both domestic and foreign societies from the operation of the general insurance laws.⁶ This act did not require the registration of foreign associations but accorded them the same exemption as domestic associations. In 1889 the legislature adopted an act revising the statutes dealing with private corporations and therein provided that domestic beneficial societies should not be subject to the general insurance laws of the State, but omitted any reference to foreign associations.⁷ It was not until 1897 that foreign beneficiary associations were required, as a condition of doing business within the state, to register and to file annual reports and to designate the Superintendent of the Insurance Department as the person upon whom process might be served. If they complied with the provisions of this statute they were exempted from the operation of the general insurance laws.⁸ This act has been carried forward in later revisions and, with changes immaterial to our inquiry, remains in force. From this hiatus in the statutes governing foreign beneficiary associations it resulted that while foreign associations were not forbidden from organizing

⁴ *Modern Woodmen v. Mixer*, 267 U. S. 544, 551; *Royal Arcanum v. Green*, 237 U. S. 531, 542.

⁵ Act of March 8, 1879; Laws 1879; R. S. 1879, §§ 972, 973.

⁶ Act of March 8, 1881; Laws of 1881, p. 87.

⁷ Act of May 11, 1889; R. S. 1889, §§ 2823, 2824.

⁸ Act of March 16, 1897; R. S. 1899, c. 12, Art. 11, §§ 1408, 1409, 1410.

lodges, obtaining members, and issuing benefit certificates in Missouri, and their certificates so issued were not deemed to be void,⁹ certificates issued in the interim between 1889 and 1897 were construed in accordance with, and actions thereon were governed by, the provisions of the general insurance laws.¹⁰ The Missouri courts, however, were apparently not called upon in any of the cases affected by this rule of decision to pass upon the question of the power of such a society, under the law of the state of its incorporation, to write a particular sort of beneficiary certificate;¹¹ but this court reversed a judgment of the Supreme Court of Missouri which, without reference to the distinction between the rule applicable to domestic and foreign societies, reexamined and refused to give effect to a judgment of the Supreme Court of Connecticut, the court of the domicile, with respect to the powers of a Connecticut association.¹²

The court below was not at liberty to disregard the fundamental law of the petitioner and turn a membership beneficiary certificate into an old line policy to be construed and enforced according to the law of the forum. The decision that the principle of *ultra vires* contracts was to be applied as if the petitioner were a Missouri old line life insurance company was erroneous in the light of the decisions of this court which have uniformly held that the rights of members of such associations are governed by the definition of the society's powers by the courts of its domicile.¹³

Third. The doctrine of estoppel was erroneously invoked to avoid the force and effect of the Nebraska judgment. The court below was of the opinion that, as the petitioner had issued a "payments to cease after 20 years" certificate, and as Bolin had fully

⁹ Schmidt v. Foresters, 228 Mo. 675, 686.

¹⁰ Kern v. Legion of Honor, 167 Mo. 471, 479, 484. Schmidt v. Foresters, *supra*; Mathews v. Modern Woodmen, 236 Mo. 326; Brassfield v. Maccabees, 92 Mo. App. 102; Gruell v. Knights and Ladies, 129 Mo. App. 496.

¹¹ In Kern v. Legion of Honor, *supra*, the court said, p. 485: "The contention that the plaintiff as husband could not be the beneficiary under the laws of Massachusetts or under its charter and by-laws, is not open to discussion or adjudication. No such issue was raised in the pleadings or asserted upon the trial in the circuit court. . . . The defendant chose its grounds of defense, none others are open in this court."

¹² Barber v. Hartford Life Ins. Co., 269 Mo. 21; reversed Hartford Life Insurance Co. v. Barber, 245 U. S. 146; see, also, Johnson v. Hartford Life Insurance Co., 166 Mo. App. 261.

¹³ Hartford Life Insurance Company v. Ibs, 237 U. S. 662; Hartford Life Insurance Co. v. Barber, 245 U. S. 146; Royal Arcanum v. Green, 237 U. S. 531; Modern Woodmen v. Mixer, 267 U. S. 544.

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performed on his part by paying all dues and assessments over the named period, the petitioner was estopped to plead its lack of power to issue such a certificate. This again was on the theory that whatever might be the nature of the petitioner's organization in Nebraska, for the purposes of this action it must be treated as an old line insurance company in Missouri. It was further held that no question of estoppel was decided in the *Trapp* case.

As to the first of these positions, it need only be said that the *Trapp* case was a class suit in which it was determined that the petitioner lacked power, under the law of Nebraska, to issue such certificates. In such a suit the association represents all its members and stands in judgment for them, and even though the suit had a different object than the instant one it is conclusive upon all the members of the association with respect to all rights, questions, or facts therein determined.¹⁴

With respect to the second position, it appears from the record that *Trapp*, in the suit in Nebraska, pleaded that the association was estopped to deny its power to issue the form of certificate in question and the opinion of the Nebraska court, by reference to a case decided on the same day, clearly indicates that the issue of estoppel was considered and determined adversely to the plaintiff.

Fourth. Under our uniform holdings the court below failed to give full faith and credit to the petitioner's charter embodied in the statutes of Nebraska as interpreted by its highest court.¹⁵

The judgment is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

So ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.

¹⁴ *Hartford Life Insurance Company v. Ibs, supra*, p. 673.

¹⁵ *Royal Arcanum v. Green, supra*, pp. 540, 543, 546; *Hartford Life Ins. Co. v. Ibs, supra*, p. 689; *Hartford Life Insurance Co. v. Barber, supra*, p. 151; *Modern Woodmen v. Mixer, supra*, p. 551.